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Greater Hartford Legal Aid



Connecticut Legal Services



NEW HAVEN  
LEGAL  
ASSISTANCE  
ASSOCIATION, INC.

November 7, 2018

Joseph Del Ciampo  
Counsel to the Rules Committee  
Director of Legal Services  
Connecticut Judicial Branch  
100 Washington ST., 3<sup>rd</sup> Fl.  
Hartford, CT 06106

Re: ACLU Proposed Changes to RPC 5.4 and 1.0 and Commentary

Dear Attorney Del Ciampo:

Thank you for relaying the Rules Committee's invitation to comment on the ACLU's proposed changes to RPC 5.4 and the Commentary. We submit this comment on behalf of the three direct-service legal services programs in Connecticut – Greater Hartford Legal Aid, Connecticut Legal Services, and New Haven Legal Assistance Association. As we are sure the Committee is aware, we are nonprofit law firms serving indigent people in our respective geographic service areas, which cover the State.

We have had the opportunity to discuss the ACLU's proposal with our colleague and frequent collaborator, the ACLU's Legal Director, Dan Barrett. While we are cognizant of the ACLU's concerns, we have some concerns about the current proposal. We recommend simply adopting the relevant paragraph, Paragraph (a)(4) from ABA Model Rule 5.4, instead of the more extensive changes to the Connecticut Rules and Commentary proposed by our colleagues at the ACLU.

Our understanding is that this issue has arisen because the ACLU of Connecticut Foundation, a nonprofit made up in part of non-lawyers, affiliates with volunteer cooperating counsel to bring cases. The ACLU would like our rules to make clear that cooperating lawyers who earn fees under fee-shifting statutes in such cases can share those fees with the ACLU of Connecticut Foundation.

To be clear, our programs do not as a rule encounter this issue. We are each a "law firm" as defined in the current RPC 1.0 (d) ("Firm' or 'law firm' denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; lawyers employed in a legal services organization or the legal department of a corporation or other organization.")(emphasis added) As such, all of the regular rules governing law firms with respect to confidentiality, conflict of interest, supervision, and professional responsibility, apply to our public interest law firms. Although our organizations have tax-exempt 501 (c)(3) nonprofit status, we are law firms and are expressly recognized as such under the rules.

Our concern about the ACLU's proposal is that the creation of a new type of entity known as a "qualified legal assistance organization" in the definitional section of Rule 1.0 could create confusion about the status of our legal services programs as law firms. Our status as law firms is important to our organizations and provides clarity regarding our professional responsibilities. It has never been questioned, and we do not want to create confusion where there is none. The new definition of "qualified legal assistance organization" proposed by our colleagues at the ACLU includes "legal aid" and "public defender" offices, which are already "law firms" under RPC 1.0 and treated as such for the purposes of conflict of interest, confidentiality, and supervision.

The creation of a "qualified legal assistance organization" is not necessary to achieve the ACLU's goals. To address the ACLU's concerns, we suggest simply adopting language similar to the ABA Model Rule 5.4(a)(4), which states:

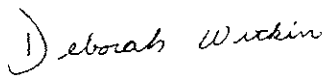
(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

The one addition to the ABA proposed language that might be beneficial is to make express (as the Massachusetts rule 5.4(a)(4) does) that rule change includes fees obtained from the opposing party through *either* a court award or settlement:

A lawyer may share legal fees from a court award or settlement with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter.

We thank the Committee for the opportunity to comment on the ACLU's proposal, and hope that the matter can be resolved in a way that achieves the ACLU's objectives without adding unnecessary complexity to Connecticut's rules.

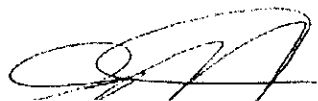
Sincerely,



Deborah Witkin  
Executive Director, Connecticut Legal Services



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Executive Director, Greater Hartford Legal Aid



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