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Richard Halliburton
Executive Director

December 19, 2008

Keith Birkes
Executive Director
The Missouri Bar
P.O. Box 119
Jefferson City, MO 65102

Re: Supplemental Comments on Proposed
Amendments to Rule 4-7

Dear Keith:

We are writing on behalf of Missouri's four legal services programs to supplement our comments (submitted on November 25, 2008) concerning the proposed amendment to Rule 4-7.1 of the Missouri Rules of Professional Conduct. We understand that the Rules Committee Chair has requested an explanation as to why we believe our programs should be excluded from the requirements of Rule 4-7.1. This letter is our response to that request.

One of the points that we made in our November 25 letter was that legal services programs should and do comply with Rule 4-7.1's requirement that lawyers not make any false or misleading statements.

The proposed amendment to Rule 4-7.1, however, contains a list of actions and statements that are presumptively misleading. A number of the items on the list would be counter-productive if applied to legal services programs.

The reason why legal services programs are different when it comes to application of the rule is that our programs receive no financial benefit from recruiting clients. Our organizations never charge fees for any of the services that we provide to any of our clients. The clients we serve cannot afford to pay legal fees and, if they were not represented by our organizations, the vast majority of our clients



would either have to represent themselves in court or not have any representation at all.

With our present staffing we are only able to assist a fraction of the low-income people who need legal assistance. Thus, unlike for-profit law firms, which face pressure to recruit clients, the legal services programs have to turn away practically as many clients as we are able to serve.

In this light, the rationale for including some of the presumptively misleading statements and actions in Rule 4-7.1 simply does not apply to legal services programs.

One example illustrates this point. Subsection 4-7.1(i) of the proposed rule prohibits lawyers from using any endorsement of a lawyer by a celebrity unless the celebrity is a current or former client of the lawyer. Missouri's legal services programs from time-to-time hold fundraisers at which we often have judges and other celebrities (local and national) endorse our work to help us raise money so we can serve more clients. Surely, this was not the type of activity that the committee intended to stop when it drafted the proposed amendment.

Other definitions of "misleading statements" in Subsection 4-7.1 that would be counter-productive if applied to the legal services programs include:

(c) Brochures or other communications to the public from the programs may state some estimate of our favorable results in cases, such as, "Of all the Medicaid cases we handle on appeal, we win over 90%." These statements are directed primarily at current or potential funders to emphasize the favorable impact of their funding. It unnecessarily dilutes the message and provides no benefit to the audience to add the required disclaimer that, "past results afford no guarantee of future results and every case is different and must be judged on its own merits." Again, we are not seeking to attract fee paying clients away from other sources of legal assistance.

(h) We refer large numbers of cases to both pro bono attorneys and attorneys participating in lawyer referral programs operated by various bar associations and the Missouri Bar. If we are required to state this in each publication that identifies and promotes our services, it will unnecessarily confuse potential clients and possibly discourage them from applying to us for legal assistance. The process for determining which family law cases, for example, that we will likely accept and which we must refer out is complicated and often changes with the availability staff and resources. We do not refer cases in pursuit of a referral fee.

(i) & (j) Some programs invite and sometimes pay nationally known celebrities to speak at our fundraising events, and the celebrity will usually say something positive about our programs and services. They are never our clients. Legal Services programs should not be prohibited from using their quotes in publications promoting our services to funders and notifying potential clients of our services. There is no possibility of clients being misled by these statements.

(m) Communications to potential clients emphasizing that our services are free should not have to add that in a very small number of cases, the client may be responsible for costs or expenses. Some people will wrongly assume that they will have to pay something and will therefore not seek our assistance. If any case is to proceed beyond the initial intake or advice, our engagement letter spells out any costs that must be borne by the client.

The legal services programs agree that our lawyers should, like all other lawyers, be barred by the Rules of Professional Conduct from making any false or misleading statements. The language that we are proposing would do just that, while allowing us to continue to make true and accurate statements that allow us to serve more clients (like having a judge or other celebrity state that our programs are effective in obtaining Protective Orders to protect victims of domestic violence).¹

Accordingly, we respectfully submit that the committee should adopt the proposed language contained in Rule 4-7.2(j) that we have submitted and which is set forth in full in the footnote above.

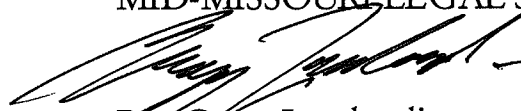
¹ The specific language we are asking the committee to adopt is an amendment to Rule 4-7.2(j), which would read as follows:

(j) The provisions of Rules 4-7.1, 4-7.2 and 4-7.3 shall not apply to services provided by a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 U.S.C. Section 2996(b) or to pro bono services provided free of charge by a not-for-profit organization, a court annexed program, a bar association or an accredited law school. The organizations and individuals providing such services shall not make any false or misleading statements in regard to their services. The definition of misleading communications contained in Rule 4-7.1 shall not apply to such services.

Thank you for your consideration on this important issue. If we can provide any additional information to assist the Committee in its work, please let any one of us know.

Sincerely,

LEGAL AID OF WESTERN MISSOURI
LEGAL SERVICES OF EASTERN MISSOURI
LEGAL SERVICES OF SOUTHERN MISSOURI
MID-MISSOURI LEGAL SERVICES



By: Gregg Lombardi
Executive Director
Legal Aid of Western Missouri

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cc: Mark Levison, Esq.