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Promoting Public-Interest Law and Pro Bono Service

November 16, 2017

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VIA EMAIL

Councilmember Charles Allen
John A. Wilson Building
1350 Pennsylvania Avenue NW
Suite 110
Washington, DC 20004

Dear Councilmember Allen:

Washington Council of Lawyers writes to support Section 223(g) of the Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2017, B22-0136, ("BEGA Amendment Act"), which will solidify the circumstances under which a District of Columbia government attorney may provide pro bono legal services. We take no position on the balance of the Act, focusing solely on the section directly relevant to our mission.

Founded in 1971, Washington Council of Lawyers is a nonprofit voluntary bar association committed to the spirit and practice of law in the public interest. We are the only voluntary bar association in the Washington, DC region dedicated exclusively to promoting pro bono service and public-interest law. Our members represent every sector of the District of Columbia legal community: lawyers from the federal and District public agencies, congressional and Council offices; lawyers and pro bono coordinators from large, mid-size, and small firms and solo practitioners; lawyers from legal services agencies in the District, lawyers from national public-interest agencies; law school administrators, faculty, and students; and members of law-related professions.

Our members are motivated by a common concern for the well-being of our community and the integrity of our civil and constitutional rights. For many in the District, particularly those living at or near poverty, well-being is directly linked to their ability to meet their civil legal needs. The DC Access to Justice Commission reported in 2008 on the staggering number of District residents who must navigate the court system on their own, without a lawyer, on critical issues such as domestic violence, probate, landlord/tenant, and adoption. *Justice for All? An Examination of the Civil Legal Needs of the District of Columbia's Low-Income Community*, District of Columbia Access to Justice Commission (2008), <http://www.dcaccessjustice.org/files/CivilLegalNeedsReport.pdf> (accessed 11/14/17). Lawyers who perform pro bono work are critical to helping meet these needs, as has long been recognized, and as is currently underscored in Rule 6.1 of the DC Rules of Professional Conduct (RPC).

By way of background, Rule 6.1 calls on members of the DC Bar to “participate in serving those persons...who are unable to pay all or a portion of reasonable attorney’s fees or who are otherwise unable to obtain counsel.” This rule amplified earlier exhortations in the District’s Code of Professional Conduct, and the Model Codes of Professional Conduct adopted by the American Bar Association (ABA) beginning in 1970. In addition, resolutions passed by the Judicial Conferences of the District of Columbia and the DC Circuit urge DC Bar members to respond to this call by providing, at minimum, 50 hours of pro bono legal services each year. DC Rules of Professional Conduct, Rule 6.1, Comment [5].

Rule 6.1 applies equally to government and non-government lawyers. Government attorneys, including those in the District of Columbia, initially found it challenging to understand precisely how to provide such service consistent with laws and regulations that limit the scope of ‘outside employment.’ Building on the clear guidance of 18 U.S.C. §205, beginning in the mid-1990s, federal agencies, including the US Department of Justice, began drafting clear and comprehensive pro bono policies articulating how lawyers could provide pro bono service under Rule 6.1 while meeting strict conflicts, ethics, and legal requirements. Federal government attorneys in the District of Columbia thus do not need to choose between their careers in public service and the directives of Rule 6.1.

Enactment of Section 223g(e) of the BEGA Amendment Act will put District of Columbia lawyers on the same footing as their federal counterparts, and provide unequivocal guidance to District of Columbia agencies seeking to develop pro bono programs. District of Columbia government attorneys will thus more easily be able to meet the call of Rule 6.1, agencies will see their way clear to developing strong pro bono policies, and District of Columbia residents with unmet legal needs may find help from a new phalanx of attorneys ready to help strengthen access to justice in our city’s courts.

Thank you for consideration of our comments.

With kind regards,



Kelly D. Voss
President
Washington Council of Lawyers

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