

LEGAL SERVICES OF MISSOURI
Comments on Proposed Amendments to Rule 4-7

Greetings:

We are writing on behalf of Missouri's four legal services programs to encourage the Committee to endorse the proposed Rule 4-7.2(j) and to urge the Court to expand the exemption contained in that Rule to Rule 4-7.1. At the outset we want to thank the Committee for its work on this complex issue and for the opportunity to comment.

The proposed Rule 4-7.2(j) provides that the advertising rules contained in Rules 4-7.2 and 4-7.3 shall not apply to not-for-profit legal services programs as well as other not-for-profit organizations providing legal services.

The wisdom of this exemption lies in the inherent difference between legal services programs and for-profit law firms. Unlike for-profit law firms, legal services organizations are not motivated to attract clients in order to obtain fees. In fact, our organizations do not charge fees to any of our clients. Our clients generally include very low-income individuals, people with disabilities and the elderly—all of whom cannot afford to pay legal fees.

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.

When we "advertise", we are generally circulating brochures and other information to low-income communities to make sure that the clients who most need our services know that we can help them.

We also promote the availability of our services to various community groups and client groups. We mail newsletters to various groups which may contain descriptions of recent favorable results as well as general developments with regard to our staff or other changes within our organizations. Many of these activities could fall within Rules 4.7-1, 4.7-2 or 4.7-3.

Furthermore, at our fundraising events we sometimes have a celebrity speaker who endorses the legal services we provide to low-income people and usually compliments the work of our organizations. We may use statements from the

celebrity in subsequent newsletters or other informational and fundraising publications. Yet, the purpose is not to solicit individual clients. The goals are to thank and encourage funders and to make sure that all low-income people are made aware of our services and have an equal chance to obtain needed legal assistance. We have no interest or need to compete with other lawyers for our clients.

Similarly, our various publications to funders, potential funders and clients may refer to past successes of our respective organizations with certain types of cases. Adding the disclaimers required by Rule 4-7.1(c) and proposed sub-paragraph (d) would unnecessarily dilute our message without benefiting the public. The same is true of subparagraph (h) regarding referrals to other lawyers (our programs often refer cases to pro bono attorneys, who handle the case for free). Requiring the disclosure of this fact when publicizing the kinds of cases we generally handle would serve only to confuse potential clients.

There is also no ethical reason to require legal services organizations to disclose that “the choice of a lawyer is an important decision and should not be based solely upon advertisements.” In fact that disclosure might well confuse and even deter potential clients from seeking the services of legal aid.

Rule 4-7.3 regarding solicitation should not apply to Missouri’s four legal services programs for the reasons set out above. Legal aid organizations are concerned only with providing legal assistance to those who need it and who cannot afford to pay a private attorney. We have no monetary interest in attracting more clients.

As do other members of the bar, our staffs take pride in maintaining the highest degree of ethical behavior, and we follow the letter and spirit of the Rules of Professional Conduct. Unless the Court adopts Rule 4-7.2(j), as we are suggesting, a strict interpretation of these rules may require us to constrain our efforts toward educating the public about the availability of services for low-income people and the types of problems we can handle and to limit our fundraising efforts.

We ask that the committee recommend that the Court adopt Rule 4-7.2(j), amended to 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.

This rule would require candor from the legal services programs who serve this state's low-income clients without inhibiting the programs' ability to inform their potential clients about the services they perform.

If our programs are not exempted from the other requirements of the advertising rule, the result will likely be the unintended consequence of confusing and discouraging low-income Missourians from receiving the very assistance our communications are attempting to publicize.

Thank you for your consideration on this important issue.