



GUIDELINES FOR LEGAL WORK BY REPORTERS COMMITTEE ATTORNEYS

**Updated June 1, 2017*

The Reporters Committee for Freedom of the Press (the “Reporters Committee”) is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding the right to a free press that is guaranteed by the First Amendment, and the rights of the news media to access public records and information about the government, including court proceedings and documents. In furtherance of that mission, attorneys employed by the Reporters Committee may, consistent with these guidelines, represent the Reporters Committee and/or third parties for the purpose of vindicating, defending, and/or expanding those rights.

Amicus Curiae Letters and Briefs

Reporters Committee staff attorneys may draft and file *amicus curiae* letters and/or briefs in cases with the potential to affect the First Amendment and freedom of information rights of the news media. Other attorneys employed by the Reporters Committee, including legal fellows, may provide legal services in connection with such *amicus* submissions at the direction of and under the supervision of a Reporters Committee staff attorney. *Amicus* submissions may be filed on behalf of the Reporters Committee alone or on behalf of a coalition of media organizations that includes the Reporters Committee. To the extent it is necessary or beneficial, Reporters Committee attorneys may work with local or other outside counsel to draft and/or file *amicus* letters or briefs. The Reporters Committee may also, from time to time, join *amicus* letters or briefs drafted by non-Reporters Committee attorneys, provided the Reporters Committee is not charged attorney’s fees.

While the Reporters Committee may participate as *amicus* in cases pending in a trial or federal district court when appropriate and warranted, the Reporters Committee’s *amicus* practice should focus primarily on cases pending in state and federal appellate courts.

Decisions concerning the Reporters Committee’s *amicus* involvement in a particular case will generally be made by the Reporters Committee’s Executive Director in consultation with the Reporters Committee’s Legal Defense and Litigation Directors. When warranted in unusual cases, the Reporters Committee’s Executive Director shall notify the Executive Committee in advance that *amicus* participation is under consideration and identify for the Executive Committee the issues presented. Once notified, the Executive Committee will determine whether to notify the full Steering Committee that *amicus* participation is under consideration in a given case, and whether and to what extent to involve the Steering Committee in any decision concerning the Reporters Committee’s involvement as *amicus* in that case.

Litigation and Other Direct Representations

Reporters Committee staff attorneys may undertake litigation and other direct representations in matters that involve First Amendment, press freedom, freedom of information, or court access issues. Other attorneys employed by the Reporters Committee, including legal fellows, may provide legal services in connection with litigation and other direct representation matters at the direction of and under the direct supervision of a Reporters Committee staff attorney. Decisions as to which specific litigation or direct representation matters Reporters Committee staff attorneys should undertake require consideration of a number of factors, and will generally be made by the Reporters Committee's Litigation Director, with the approval of its Executive Director, on a case-by-case basis. Those factors include, but are not limited to:

- How well the matter fits within the Reporters Committee's stated "Litigation Priorities";
- The potential impact or "footprint" of the case, which includes both the potential benefit(s) of a favorable outcome, as well as potential harm(s);
- Reporters Committee resources, including the anticipated staff time the matter will require, the need for (and availability of) cooperating/local counsel, and the anticipated costs of litigation; and
- The motivations, expectations, and goals of any potential third-party client, and whether the potential third-party client's goals for the case are consistent with Reporters Committee's goals.

Legal services provided by Reporters Committee attorneys are provided on a no fee, pro bono basis, and the financial status of a potential third-party client is not a factor in the selection of matters to be undertaken by Reporters Committee staff attorneys. As stated in the Reporters Committee's "Litigation Priorities," however, when a potential client is a nonprofit news organization, or a freelance reporter or other journalist with little or no access to other sources of legal support, that factor may be considered in legal defense cases.

The Reporters Committee does not engage in the practice of law, nor does it represent clients. Any direct representation of a third party by a Reporters Committee staff attorney requires a letter of engagement signed by the responsible Reporters Committee staff attorney and the third-party client that sets forth the scope of the representation. Engagement letters should make clear that the third-party client is being represented by an attorney employed by the Reporters Committee, not by the Reporters Committee itself.

Once a Reporters Committee staff attorney has been retained by a third party in connection with a particular matter, neither the Reporters Committee nor any member of its Steering Committee may interfere with their attorney-client relationship, or direct or regulate the independent professional judgment of the attorney in connection with that representation. Neither the Reporters Committee nor any member of its Steering Committee may participate in, manage, or direct litigation brought on behalf of third parties.

In litigation in which the Reporters Committee itself is a party, the responsible Reporters Committee staff attorney(s) shall treat the Reporters Committee, through its Steering Committee, as a client.

In joint representation cases, the responsible Reporters Committee staff attorney, along with the Reporters Committee's Executive Director and Litigation Director, shall determine, prior to taking on such representation, that the responsible the Reporters Committee staff attorney can adequately represent the interests of each client, and that no current conflict of interest exists. The implications of the joint representation, and the possibility that a conflict of interest between the clients may arise during the course of the representation must be explained before an attorney-client relationship is formed, and conflict waivers obtained.

Prior to taking on any new litigation or direct representation matter, the responsible the Reporters Committee staff attorney, in addition to checking for attorney-client conflicts of interest (*see* D.C. Rules of Prof'l Conduct 1.7–1.9), should also check whether litigating the matter would require the Reporters Committee staff attorney to take a position that is either (1) contrary to a position previously taken by the Reporters Committee or (2) likely to be perceived by supporters or allies of the Reporters Committee as being contrary to a position previously taken by the Reporters Committee. Reporters Committee staff attorneys should avoid undertaking any litigation or other direct representation when it is foreseeable that the matter may create an actual or perceived positional conflict with the Reporters Committee.

Decisions concerning an Reporters Committee attorneys' representation of the Reporters Committee and/or any third-party in any litigation or other direct representation matter will generally be made by the Reporters Committee's Litigation Director, with the approval of the Reporters Committee's Executive Director. When warranted in unusual cases, either the Litigation Director or Executive Director shall notify the Executive Committee in advance that the direct representation is under consideration and identify for the Executive Committee the issues presented. Where the direct representation under consideration is of a third-party, such notification to the Executive Committee shall not reveal confidential information provided by the prospective third-party client in connection with seeking legal representation absent an express written waiver of confidentiality on the part of that prospective client.

Reporters Committee attorneys should, in appropriate cases, seek to recover attorney's fees and costs incurred in litigation. While legal services provided by Reporters Committee attorneys are provided on a no fee, pro bono basis, third parties represented by Reporters Committee attorneys may, in appropriate cases, be asked to bear ordinary costs, such as filing fees, in connection with their representation. The representation of any third-party client by a Reporters Committee attorney may not be conditioned on the client's agreement to waive its right to settle litigation on any terms the client deems acceptable.

Any attorney's fees or costs recovered by Reporters Committee attorneys in connection with any litigation matter will be deposited directly into the Reporters Committee Litigation Fund, an account which is to be maintained separately from the Reporters Committee's general operating funds and other accounts. Monies in the Reporters Committee Litigation Fund are to be used

solely for litigation purposes. Such purposes include, for example, paying court costs and filing fees, court admissions fees, and staff attorney salaries.

The Reporters Committee will maintain malpractice insurance for the purpose of satisfying any claim for damages arising from the malpractice of any Reporters Committee attorney.

LITIGATION PRIORITIES

- (1) *To pursue high-visibility and legal reform litigation for the benefit of journalists and news organizations.*

Reporters Committee attorneys should endeavor to engage in impact litigation that involves important legal issues affecting journalists and news organizations. Litigation may be impactful either because it involves newsworthy subject matter or because it presents an opportunity to develop favorable case law in a jurisdiction. Ideally, Reporters Committee attorneys will litigate cases that have both of these characteristics.

Because the Reporters Committee's Steering Committee recognizes the need for more impact litigation in the areas of freedom of information under federal and state law, and access to court proceedings and court documents, litigating cases in those strategic issue areas is a priority. While not a requirement for impact litigation, it is a priority for Reporters Committee attorneys to represent journalists and/or media organizations in direct litigation matters.

- (2) *To provide legal defense for nonprofit news organizations, freelance journalists, bloggers, and journalists without institutional affiliations.*

The Reporters Committee's Steering Committee recognizes that changing technology and economic factors have impacted the news media industry in recent years, and led to a rise in nonprofit news organizations, as well as a rise in the number of freelancers, bloggers, and journalists with no institutional affiliations. These circumstances have created a need for pro bono legal defense in the areas of libel, privacy and other newsgathering torts, and reporters' privilege, among others. Accordingly, assisting nonprofit news organizations and journalists with little or no access to other sources of legal representation in legal defense matters is a priority.