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September 16, 2010

Howard Delaney
City Attorney
5th Floor, City Hall
808 W. Spokane Falls Blvd.
Spokane, WA 99201

Dear Mr. Delaney:

This is written on behalf of the ACLU of Washington. We have reviewed correspondence among Rocco Treppiedi and Mike Piccolo, Assistant City Attorneys, and Breean Beggs, of the law firm of Paukert & Troppmann (formerly of The Center for Justice in Spokane). In this correspondence, Mr. Treppiedi attempts to prevent Mr. Beggs from communicating with members of the Spokane City Council on matters such as police accountability and oversight.

The ACLU-WA is very concerned about this conduct because we believe Mr. Beggs has a constitutional right to communicate with elected officials, under both the U.S. and Washington Constitutions, regarding issues of general policy such as these. The City Attorney's attempt to interfere with Mr. Beggs' constitutional right to petition his representatives is improper and should stop immediately.

Mr. Treppiedi argues incorrectly that Washington's Rules of Professional Conduct applicable to lawyers (RPC 4.2) prohibit contact between Mr. Beggs and City Council members because Mr. Beggs represents a client who is suing the City and further because the lawsuit might implicate issues of accountability and oversight of the police. I understand that there is a factual dispute as to whether that characterization of the lawsuit is accurate, but for these purposes there is no need to resolve that dispute. There can be no dispute that accountability and oversight are matters of general policy and of legitimate public concern. As such, citizens such as Mr. Beggs have an absolute right to communicate with elected officials regarding such issues and there is no justification for lawyers from the City to use RPC 4.2 to restrict that right.¹

¹ Not only does Mr. Beggs have a constitutional right to petition his government, but his clients also have a right to petition the government on matters of general policy through their lawyer.

The former Chief Disciplinary Counsel for the Washington State Bar Association has written on precisely this issue. He concluded:

Washington's RPC 4.2 generally prohibits a lawyer from communicating about the subject of the representation with a person whom the lawyer knows is represented by another lawyer in the matter. Two important exceptions, however, permit such communication: if the other lawyer consents to the communication, and if the communication is authorized by law.

Where the matter of representation involves communicating with a governmental entity or official, the authorized-by-law exception to the no-contact rule significantly limits the rule's application. This is especially true when the basis for the exception is the First Amendment constitutional right of citizens to petition (likely including through counsel) for redress of their grievances. In this case, private counsel may communicate with represented governmental officials authorized to take or recommend action on the issue, without the consent of the government lawyer, but, under an ABA opinion, only if the sole purpose of the communication is to address policy issues (including settling the claim), and if the private lawyer gives the government lawyer adequate advance notice of the intended communication. While the author does not agree with the ABA that such advance notice is mandatory for the communication to be exempt from RPC 4.2, such advance notice is recommended.

His opinion was published in the *Bar News* (Washington State Bar Association) and is available at <http://www.wsba.org/media/publications/barnews/archives/2001/jun-01-ethics.htm>.

The RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS likewise makes it clear that a lawyer may communicate with a represented government official regarding general policy issues without running afoul of the general anti-contact rule of RPC 4.2. *Id.*, §101. Indeed, the Restatement concludes that a lawyer may even contact a represented government official for the purpose of settling a specific claim, so long as the subject of the discussion has general policy implications that go beyond the individual claim. Even if we were to accept Mr. Treppiedi's assertions as to the scope of the *Zehm* litigation (which assertions are disputed by Mr. Beggs) no one can seriously dispute that the issues of police accountability and oversight are general policy issues that have ramifications beyond that lawsuit.

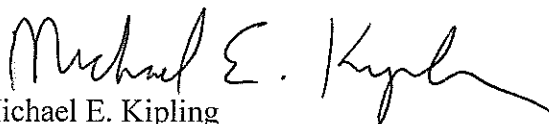
Much of the authority cited above relies on the First Amendment to the U.S. Constitution, which provides that: "congress shall make no law . . . abridging the . . . right of the people . . . to petition the Government for a redress of grievances." Washington's Constitution is even more protective of this right: "The right of petition . . . shall never be abridged." Washington Constitution, Art. I, Section 4.

For all these reasons, it is clear that lawyers for the City have no right to attempt to prevent Mr. Beggs from communicating with City Council Members on matters such as police accountability and oversight. The fact that Mr. Beggs may also represent a client with similar interests in a pending lawsuit does not deprive Mr. Beggs of his constitutional right to petition the government. Nor is it appropriate for the City's lawyers to circumvent this authority by advising City Council members not to speak with Mr. Beggs unless a City Attorney is present. *Cf., Wright v. Group Health Hosp.*, 103 Wn. 2d 192, 203 (1984). In *Group Health*, the Washington Supreme Court found that *even in a case that did not involve public officials or constitutional rights*, it was improper for counsel to advise current and former employees not to meet with opposing counsel when such contact was not prohibited by the Disciplinary Rules.

On behalf of the ACLU-WA, I ask that you carefully review the authorities cited herein and instruct Mr. Treppiedi and the other attorneys in your office that they should immediately stop any efforts to preclude communications between Mr. Beggs (or any other person) and City Council members. I also ask that you inform the members of the City Council of your position and confirm in writing to Mr. Beggs that he has the right to communicate with City Council members on any matters of public interest, including matters pertaining to police accountability and oversight.

Sincerely,

KIPLING LAW GROUP PLLC


Michael E. Kipling

cc: Rocco N. Treppiedi
Michael J. Piccolo
Breean L. Beggs
Mayor Mary Verner
City Council Members