

Faulk, Camilla

From: Elizabeth Powell [PowellLaw@comcast.net]
Sent: Wednesday, April 29, 2009 1:40 PM
To: Faulk, Camilla
Subject: comment on proposed legal technician rule

Dear Ms. Faulk:

I am concerned about the adoption of the "legal technician" rule. I practice in family law and also represent a fair number of tenants (and some landlords) in disputes related to rental housing.

I just got through with a family law case that was previously managed by a non attorney acting for both parties. As a condition of my work for her I requested that she advise your committee of her experience.

Even though the decree recited that the wife was to receive benefits from the husband's pension, no QDRO was written. My client was unaware that a QDRO needed to be written, signed and approved by the Court and the plan administrator.

I wrote the QDRO, filed it and it was subsequently approved by the plan administrator. My client will begin receiving benefits next month. However, her ex retired three years ago and that represents tens of thousands of dollars to which she was entitled by the terms of the decree that she has not received. Barring cooperation from the ex husband, the only way for her to get the funds is to sue him pursuant to the decree, which is going to take time, money and effort. The non attorney failed to foresee the need for and draft, file and get approval for this QDRO. I am concerned that even with the safeguards this rule proposes, other non attorneys may continue to miss issues such as this.

In landlord tenant actions, the defenses available to tenants are few and highly technical. I continually review new caselaw and comb through old caselaw to elicit solid defenses if possible. The stakes are high. The costs of homelessness are born by the evicted tenant, the owners who lose rent, and the state when the evicted tenant requires more services. I have prevailed once or twice on issues that a non attorney would likely miss.

Every attorney I know and work with provides no- or low-cost services, participates in providing mediation/settlement conference services and contributes to Volunteer Legal Services in one form or another. Rather than giving a low income person help that may not be help at all does it not make more sense to reward attorneys better for providing low or no-cost services? CLE credit, perhaps? Credit towards student loans?

But by giving the low income litigants help from non lawyers, the system may exacerbate the problem it seeks to avoid.

I remain very truly yours,

Elizabeth Powell

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