

MACDL Lawyer Assistance Strike Force Policy

MISSION STATEMENT: To provide the members of MACDL as a benefit of their membership, the opportunity to consult with a member of MACDL's Lawyers Assistance Strike Force, at no cost, if the MACDL member is threatened in any way for providing legal representation to a client in a criminal proceeding and is subpoenaed to provide information, cited for contempt, being disqualified from the representation, or who becomes the subject of a bar complaint.

MEMBERS OF LAWYERS ASSISTANCE STRIKE FORCE: The MACDL Lawyers Assistance Strike Force shall consist of the duly elected board of directors of MACDL, all past presidents of MACDL (members of the judiciary excepted), and any other regular members of MACDL willing to participate.

GUIDING PRINCIPLES:

1. Eligibility:

A lawyer, who is a member of MACDL at the time the matter concerning which he or she seeks Strike Force assistance arose, is eligible to receive Strike Force assistance in the form of confidential consultation without charge. The Strike Force may occasionally, in its discretion, provide assistance to an individual who is not a member (or who is not a lawyer member) at the time the matter arose, when three criteria are met:

- a) the individual immediately joins MACDL; and
- b) the principle or issue involved in the dispute is important to the Association and has widespread potential application to the legal profession as a whole; and
- c) there are sufficient resources available.

Strike Force assistance to individuals who were nonmembers at the time the matter arose shall be the exception rather than the rule.

2. Types of cases in which Strike Force assistance is available include

a. Cases in which the requesting attorney is

1. Threatened with criminal action, or charged with a crime;
2. Threatened with, or found in, civil contempt;
3. Threatened with, or subjected to, disciplinary action;
4. Threatened with subpoena, or subpoenaed; or
5. Otherwise harassed, or is sanctioned without just cause;
and

b. A majority of the Strike Force committee determines, in its sole discretion, that one or more of the above actions arose out of the requesting attorney's legal representation of any person or persons, past or present, resulting from his or her zealous and ethical tactics in a criminal case or in a theoretically civil case such as post-conviction relief, habeas corpus, or civil-rights actions directly involving the application of criminal sanctions, such as imprisonment and execution.

3. Presumption of confidentiality: There shall be a presumption that an attorney seeking assistance wishes to have her or his identity remain confidential. Personally-identifying information about the requesting attorney shall be restricted to the executive director or his designee, the chair of the Strike Force committee, any additional Strike Force attorney assigned to the matter, and any officers or directors of the Association as are necessary to secure special authorizations or funding.

All persons who receive such information shall maintain the confidentiality of the identity of the attorney applying for assistance. An attorney applying for assistance will be asked if he or she wishes that the matter remain confidential. If waived, the identity of the applicant may be circulated within the Association, as the Strike Force committee chair deems appropriate. Waiver of personally identifying information shall not be a condition of receiving the consultation that the Association offers to members as a benefit of membership.

PROCEDURE:

1. Consultation with a Strike Force attorney is a benefit of membership of the Association.

a. Any MACDL member (or, within the limits set forth in section 1 of this Policy, any qualifying nonmember) seeking assistance shall make a written request for consultation to the executive director of MACDL. A form for such requests is attached to this Policy. At this stage, the Association shall not solicit any attorney-client privileged, other attorney-client confidential, or attorney work-product immune information.

b. Within twenty-four hours of its receipt, the executive director or his designee shall direct said request to the chair of the Strike Force committee.

c. The chair of the Strike Force committee or his or her designee shall either assume the responsibility for acting on the request or refer the request to a Strike Force member who is able and willing to consult with the requesting member to the issues raised by his or her request.

d. Either the Strike Force committee chair or his or her designee, or the other Strike Force attorney assigned, shall directly contact the requesting member to begin the consultation process. Information shared in the course of the consultation that is attorney-client privileged,

otherwise attorney-client confidential, or attorney work-product immune that retain its confidential nature in the hands of the Strike Force attorney.

e. At the conclusion of the consultation process, the Strike Force attorney shall make a written recommendation to the member and to the Strike Force committee. At that time, absent further action as provided by this Policy, the Strike Force assistance to the requesting attorney in that matter shall terminate.

2. At quarterly meetings, the Strike Force committee chair or his or her designee shall report, in the aggregate and without disclosing either personally-identifying information about requesting attorneys or attorney-client privileged, other attorney-client confidential, or attorney work-product immune matter reflecting the actions of the committee during the previous quarter.

3. In addition to the consultation that is an obligation of the Association, the Strike Force may provide additional assistance, or may cause the Association to provide assistance in other forms, (a) on presentation of the matter by the Strike Force committee chair or by his or her designee to the executive committee and with its approval, or (b) on a consensus of the chairs of the Strike Force committee, amicus committee, and executive committee.

4. Approval of the majority of the executive committee is required before MACDL intervenes in a case that involves taking a position adverse to the accused, defense counsel, and/or a MACDL member who is directly involved in the case (*e.g.*, representing a witness in the proceeding who is effected by the issue on which it is proposed that MACDL seek to intervene).

5. In all other cases, appearance and/or intervention in court on behalf of MACDL only requires a consensus of the chairs of the relevant

committees—Strike Force committee, amicus committee, or executive committee.

6. If there is a disagreement between the chairs of the three foregoing committees, MACDL shall not intervene without approval of the majority of the executive committee.

7. In the event that MACDL intends to intervene in a case and take a position that is adverse to a defendant, defense counsel and/or a MACDL member who is directly involved in a case (including capital cases), MACDL shall give reasonable notice to the defendant if pro se, defense counsel, or any other MACDL member who is directly involved in the case. A decision that a notice is not appropriate in a particular case should be made by the executive committee.

8. The only exception to the foregoing rule is that in capital cases involving a “volunteer” —*i.e.*, a condemned person who purports to advocate for or not to oppose his or her execution, and/or to waive his or her right to an appeal and/or post-conviction review and/or other relief (including executive clemency). In such cases the Strike Force shall intervene on behalf of MACDL during the mandatory sentence review by the Missouri Supreme Court. The Strike Force may intervene in any other stage of the proceedings, including those not specifically criminal or adversarial in nature.