

**F. UNC Center for Civil Rights, Responses to Questions Posed by the UNC Board of Governors Committee (as relayed by Tom Shanahan)**

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**January 13, 2015**

1. When the Center represents clients in litigation, what entity is representing the client? Given that the Center is part of the University (and that staff are UNC employees), is it the University? Is it the states? Who (or what) is representing the client?

**Clients are provided direct representation by Center staff lawyers Mark Dorosin and Elizabeth Haddix (as well Attorney-Fellows when those positions are staffed). The UNC Center for Civil Rights is the “entity” that is providing representation, much in the same way that the various legal clinics sponsored by the UNC School of Law, UNC Juvenile Justice Clinic or the UNC Community Enterprise Clinic, are the entities providing legal representation to clients who are directly represented by law students and Law Clinic faculty.**

**In addition, as a matter of School of Law policy, the Center always partners as co-counsel with one or more private lawyers and/or law firms (working *pro bono*) in each of its matters that proceed to litigation.**

2. If the Center had a client that has a legal issue against an agency or representative of the State of North Carolina, is there any prohibition on CCR representing a client against another entity of the State?

**We know of no prohibition against the Center representing a client against an agency or representative of the state, and indeed, we know of many examples of circumstances in which one government-related legal entity in North Carolina finds itself in court against another. The School of Law clinics, for example, often go to courts representing juvenile defendants who are being charged by state or local entities, or where a local school board is the adverse party. More generally in North Carolina, criminal defendants on appeal are often represented by a lawyer from the Office of the Public Defender within the Office of Indigent Defense Services, while the State is simultaneously represented by a lawyer from the Attorney General’s Office. Still more broadly, inter-branch litigation brought by various entities of State and local government against each other is a regular feature of litigation in the State of North Carolina. In the 20-year-old *Leandro* school finance/school adequacy litigation for example, originally filed in 1994, five local school boards (entities ultimately created under State authority) sued the State of North Carolina and the State Board of Education, only to be joined by six additional school boards which participated as intervening parties. And in the most recent iteration of that case, the State Board of Education joined the plaintiffs on an appeal against the State. In 2009**

**the State Superintendent of Public Instruction sued the Governor and the State Board of Education. Just last year the Governor filed suit against the General Assembly without any suggestion that there might be a legal prohibition in doing so.**

**Additionally, the Center cannot be considered an agency of the State for conflict of interest purposes. The Center does not purport to, and does not, speak for the State. It cannot bind the State. It is not privy to confidential State information and has no attorney/client relationship with the State or any of its agencies. Although the Center is a part of a state law school, it does not act, for litigation purposes, as the State (in the way that the Attorney General's office does).**

3. Does the Center draw any distinctions between representing an individual and representing organizations, non-profits, or corporations?

**The Center has represented individuals, incorporated and unincorporated community-based organizations, and non-profit organizations. The nature of the case and the regulatory, statutory, or constitutional claims to be pursued, and important procedural issues related to a party's standing, possible later mootness, the nature of the relief requested, and even fear of retaliation, often prompts the Center to represent both individuals and organizations in litigation.**

**The Center does not represent for-profit corporations or organizations.**

**You have also asked whether it might be an ethical violation or constitute conflict of interest for a lawyer at the Center to represent a client against another state agency. As noted in response to question 2, there is no general state or policy prohibition against Center lawyers representing their clients against a state agency. Similarly, we know of no provision in the North Carolina State Bar's Rules of Professional Conduct that implicates or would prohibit such representation.**