

GREETINGS

SETTING THE STAGE

The DC Bar ethics opinion

An excellent “check list” of issues and concerns

Paying the lawyer

United States v. Gallagher

The trial of Chief Gallagher was not the first in which the civilian counsel's fee were to be “publicly” funded

But for lawyers it's a wake-up call--perhaps

UCMJ

At trial or on appeal

Uniformed (MDC)—no charge to client

Civilian (CDC)—no cost to Government

- **CDC is lead counsel**
- **MDC stays as co-counsel--no charge**

Ethical issues for CDC

Who is the client

Who decides

Motives (agenda)

Trial by media

Who is paying
Wife or Parents

Third-party
(Family member)(Girlfriend)
(Loan)*
(Organization)

It is said
Shall be *reasonable*, and
adequately *explained*, and
“preferably in *writing*[.]”

Fee may be split with another *lawyer*

With *disclosure*, and
With *consent*, and
In *advance*,
and “preferably in *writing*.”

It is written

Client understands and agrees that *regardless of the source* of attorney's fees, Attorneys are only responsible to Client and no other third-party regarding decisions pertaining to the conduct of the case and termination of representation. Additionally, Client is the one ultimately responsible and liable for the payment of all fees and expenses.

Citing with approval *Drippner v. Mutz*, 205 Minn. 497, 287 N.W. 19 (1939) the Virginia Supreme Court has noted:

It is a misconception to attempt to force an agreement between an attorney and his client into the conventional modes of commercial contracts. While such a contract may have similar attributes, the agreement is, essentially, in a classification peculiar to itself. *Such an agreement is permeated with the paramount relationship of attorney and client which necessarily affects the rights and duties of each.*

Heinzman v. Fine, Fine, Legum and Fine, 217 Va. 958, 962 (1977).

Who controls

ABA: [S]hall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

Army: A non-government civilian lawyer representing individuals in any matter for which The Judge Advocate General is charged with supervising the provision of legal services shall not permit . . . to direct or regulate or interfere in any way with that lawyer's professional judgment in rendering such legal services.

Who decides

The SCOTUS says that some certain fundamental decisions can only be made by the client.

- **Plead guilty (including rejecting plea deal)**
- **Waive a jury trial**
- **Testify at trial**
- **Take an appeal**
- **Proceed pro se**

See [McCoy v. Louisiana](#), 584 U.S. ____ (2018).

(The Sixth Amendment guarantees a defendant the right to choose the objective of his defense and to insist that his counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty.)

What if

The fee payer says to the Client, we won't pay any fee unless you contest this case?

The fee payer says to the Client, we won't pay any more fees unless you plead guilty and keep our costs down?

What do you say when you hear of this?

What if the payer says this directly to counsel?

“Occasionally, lawyers and defendants have such strongly opposing views that the lawyer cannot effectively carry out the defendant's desired strategy. In such a situation, the attorney may seek to withdraw as the defendant's counsel, or the defendant may seek to have the attorney replaced. Whether this will be permitted in either case depends on whether the prosecutor will be prejudiced or the proceedings will be unnecessarily delayed or disrupted.”

(b)(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement. (Trial strategy, or abusing a witness?)

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled. (Fee dispute?)

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client.

(7) other good cause.

Flynn selling home under mounting legal bills, as McCabe racks up cash online to pay lawyers



By Alex Pappas | Fox News



With the impact of tech solutions for a law practice. It was only a matter of time before law firms looking to meet basic needs such as raising capital turned to the internet as well. Historically associated primarily with tech startups, *crowdfunding*, or *soliciting* money from numerous individuals via an online platform, has in recent years become a viable option for lawyers seeking funding for law firm operations or specific legal matters.

We have seen that in the court-martial and military justice world.

Many in the legal world predict that this kind of financing will continue to have a growing impact on litigation in the years ahead, particularly in light of the access to justice issues and high unemployment rates that continue to plague the legal industry. However, some also warn of the dangers of embracing this new funding avenue too quickly. [C]rowdfunding isn't without its ethical risks. But are these actually new risks, *or is this another situation where lawyers are required to simply apply old rules to new technology?*

(Cleaned up.)

[*] Sarah Andropoulos, [The Ethics of Crowdfunding for Lawyers: Uncharted Territory or Familiar Terrain](#), VERDICT, June 26, 2017.

[LtCol Schller] has raised more than \$2.5M through former Navy SEAL Eddie Gallagher's Pipe Hitter Foundation.

<https://pipehitterfoundation.org/>

The money, according to the foundation's website, is to be used not only for his legal defense, but also emergency relief funds, relocation expenses and transition out of the military, possible loss of military benefits and retirement, and family support for his family.

GoFundMe

Has your client ever suggested paying for your services via donations from a [Kickstarter](#) campaign, or a [GoFundMe](#) page? The District of Columbia Bar [recently considered](#) such donation-based crowd-funding and greenlighted the basic concept — but noted that the ethical implications vary depending on the lawyer’s level of involvement in the crowdfunding effort. [*]

- When the lawyer directs the crowdfunding, the lawyer must comply with the Rules governing a lawyer’s receipt of money from third parties. Further, a lawyer who directs the crowdfunding should be cognizant of ethical obligations regarding fee agreements, communications with donors, and the management of the funds raised.

The Agenda

May the lawyer publicize the case on the crowdsourcing site without breaching his duty of confidentiality?—Yes says the Philadelphia Bar Association in a *non-binding advisory* opinion. [*]

A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized ... "

In order to seek funds on a crowdsourcing site, the lawyer will of course have to reveal certain information about the matter sufficient to interest the public in making contributions.

- Get informed consent.
- Make sure client understands the risks.
- Keep information to the minimum.

Compare [Rule 1.6](#) with [ABA Model Rule 3.6](#) (extrajudicial statements and pretrial publicity).

[*] [Philadelphia Bar Association Prof. Guidance Comm. Op. 2015-6](#).

A Charleston, West Virginia, lawyer who set up a misleading GoFundMe page to fund his transition to solo practice has been suspended from law practice.

The West Virginia Supreme Court of Appeals suspended the lawyer for 42 months and issued a public reprimand.

A state disciplinary board hearing subcommittee found that the GoFundMe page violated ethics rules regarding misleading representations and solicitation of clients.

Legal Defense Funds

- Patriot Legal Expense Fund Trust, LLC.
- [Nat'l Bail Fund Network](#), Nat'l Lawyers Guild.
- Kathleen Clark, [Paying the Price for Heightened Ethics Scrutiny: Legal Defense Funds and Other Ways That Government Officials Pay Their Lawyers.](#) 50 STANFORD L. REV. 65 (1998).

United American Patriots

United American Patriots
(“Who we support”)

But it might get messy

Andrew Dyer, Navy SEAL Eddie Gallagher is suing his former lawyers and a military legal defense nonprofit. Task & Purpose, September 17, 2019.

Andrew Dyer, Ex-attorney for Eddie Gallagher says the acquitted SEAL owes him up to \$1 million. Task & Purpose, August 8, 2019.

Recently a federal judge ordered arbitration, a clause in the contract between Vokey and Gallagher. Gallagher v. Vokey, No. 20-1100 (5th Cir. Jul. 1, 2021).

DC Bar
Ethics Opinion 375

Lists common issues and concerns

See also
Philadelphia Bar Assoc'n
Opinion 2015-6

Marine A

Daily Mail investigation uncovered vital evidence.

The evidence had not been heard at the original court martial in November 2013 when he was jailed for life.

“left to rot in jail, which is where he would be now were it not for the incredible generosity of Daily Mail readers who raised more than £810,000 to fund a legal challenge to his conviction.”

“The fighting fund paid for a new legal team and psychiatric evaluation, which diagnosed a combat stress condition called an adjustment disorder.”

Rebecca Hardy, [I wouldn't have survived with my wife's help and yours](#). Daily Mail, April 5, 2019.