Case No. 81018 C/W 81172

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUTH L. COHEN,

Appellant,

v.

PAUL S. PADDA and PAUL PADDA LAW, PLLC,

Respondent.

Appeal from the Eighth Judicial District Court of the State of Nevada, in and for County of Clark

OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF CLAGGETT & SYKES LAW FIRM

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OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF CLAGGETT & SYKES LAW FIRM

Appellant Ruth L. Cohen ("Cohen"), by and through her attorneys of record, the law firms of Hayes Wakayama and Campbell & Williams, hereby submits her Opposition to Motion for Leave to File Amicus Curiae Brief of Claggett & Sykes Law Firm ("C&S"). This Opposition is made and based upon the following Memorandum of Points and Authorities, the Declaration of Liane K. Wakayama, Esq. and the pleadings and papers on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Amicus Curiae briefs are designed to assist the Court with rationales and insights that are not otherwise available from the parties themselves. C&S has no such insight to provide this Court and can only reiterate the positions already taken by the Respondents in this matter, who have every incentive to fully address the rules of professional conduct at issue herein. The question presented by this appeal is whether Cohen's suspension from the practice of law prohibited her from recovering her share of proceeds under a partnership dissolution contract with her former partner Respondent Paul Padda ("Padda"), where the parties entered into the agreement long before Cohen's suspension. As best evidenced by C&S's proposed Amicus Curiae Brief, it has no useful and unique perspective to add in this appeal

and simply regurgitates the arguments set forth in Padda's Answering Brief. C&S's Motion should therefore be denied.

II. LEGAL ARGUMENT.

Nevada Rule of Appellate Procedure 29 governs amicus curiae briefs. In this case, an amicus curiae may file a brief "***only by leave of court granted on motion or at the court's request or if accompanied by written consent of all parties***." NRAP 29(a) (emphasis added). Nevada courts have held "[t]here is no inherent right to file an amicus curiae brief with the Court." *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999). "It is left entirely to the discretion of the Court." *Id.* (citing *Fluor Corporation and Affiliates v. United States*, 35 Fed. Cl. 284, 285 (1996); *Waste Management of Pennsylvania, Inc. v. City of York*, 162 F.R.D. 34, 35 (M.D. Pa. 1995)). "This is true notwithstanding the fact that the parties may have consented, or do not object, particularly where the applicant's only concern is the manner in which this Court will interpret the law." *Id.* (citing *American College of Obstetricians and Gynecologists, Pennsylvania Section, et al. v. Thornburgh*, 699 F.2d 644 (3rd Cir. 1983)).

Amicus briefs are typically only permitted in four circumstances: (1) when a party is not represented competently; (2) when a party is not represented at all; (3) when the amicus has an interest in some other case that may be affected by the decision in the present case; or (4) when the amicus has unique information or

perspective. *Soos v. Cuomo*, 470 F. Supp. 3d 268, 284 (N.D.N.Y. 2020) (quoting *Payphones, Inc. v. Dobrin*, 410 F. Supp. 3d 457, 465, n.3 (E.D.N.Y. 2019)). "Otherwise, leave to file an amicus brief should be denied." *Id*.

> The usual rationale for amicus curiae submissions is that they are of aid to the court and offer insights not available from the parties. Thus, when those purposes are not served, typically, courts deny motions seeking leave to appear amicus curiae. *Id.*

This has been the standard for over 100 years. *N. Sec. Co. v. United States*, 191 U.S. 555, 556, 24 S. Ct. 119 (1903).

The *Long* court referred to a decision issued by Chief Judge Posner, of the Seventh Circuit, who wrote,

> [t]he vast majority of amicus curiae briefs are filed by allies of litigants and duplicate the arguments made in the litigants' briefs, in effect merely extending the length of the litigant's brief. *Id*. (quoting *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1063 (7th Cir. 1997)). ***Such amicus briefs should not be allowed. They are an abuse. The term 'amicus curiae' means friend of the court, not friend of a party***. *Id.* (emphasis added).

Significantly, courts should only grant leave to appear as an amicus if the information offered is "**useful**." *Long*, 49 F. Supp. 2d at 1178 (quoting *Waste Management*, 162 F.R.D. at 36) (emphasis added).

A. BOTH PARTIES TO THIS APPEAL ARE REPRESENTED BY COMPETENT COUNSEL.

In this case, there is simply no need for an amicus curiae brief to be filed. Cohen is represented by two law firms with decades of experience in Nevada, while

Padda is currently represented by three different law firms (in addition to representing himself in these proceedings) with similar levels of experience. *See Soos*, 470 F. Supp. 3d at 284. The competency of Cohen and Padda's representation is not in question. Equally as important, C&S failed to identify an interest in any other case that may be affected by the decision in the present case. *See id.*

B. C&S HAS NO UNIQUE OR USEFUL INFORMATION FOR THE COURT.

A cursory review of C&S's proposed Amicus Curiae Brief reveals that C&S has no unique or useful information for the Court's consideration. *See Soos*, 470 F. Supp. 3d at 284. Rule 29(c) requires the movant to state their "interest" in the pending matter. NRAP 29(c)(1). C&S proclaims that it "has a vested interest in the RPC 5.4(a) issues" because C&S "principally works on contingency fees and often has fee-splitting agreements with other lawyers."[1] That is it. That is all. The governing standard does not permit amicus briefing from other law firms simply because they practice in similar areas of law or *also* use industry-standard fee-splitting agreements.[2] To the contrary, the governing standard provides "[t]here is no inherent right to file an amicus curiae brief with the Court"[3] and that the same

[1] *See* C&S's proposed Amicus Curiae Brief on file herein at page 1.
[2] C&S's claimed interest in this matter is even further removed as this case does not involve issues pertaining to fee-splitting agreements, but rather, a partner dissolution agreement between former law partners.
[3] *Long*, 49 F. Supp. 2d at 1178.

should only be permitted "when the amicus has unique information or perspective" that can "offer insights not available from the parties." *Soos*, 470 F. Supp. 3d at 284. "Otherwise, leave to file an amicus brief should be denied." *Id.*

C&S's assertions of generalized connections to this appeal fall woefully short of demonstrating an "interest" or the useful and unique perspective courts expect from amicus parties. If C&S's claimed "vested interest" qualified it to submit an amicus brief, nearly every law firm across the country would qualify as a party with "unique information or perspective" as nearly every firm has or does engage in fee-splitting agreements (once again, the relevant issues at bar do not concern a traditional fee-splitting agreement, but rather, a partnership dissolution agreement). "[F]ee-splitting agreements are common in the legal profession." 11 A.L.R.6th 587 (originally published 2006). "[D]ividing fees when one lawyer refers a case to another lawyer outside the firm is a long-standing and common practice."[4] Agreements outlining the division of assets in a dissolving partnership are also common-place. Moreover, the fact that C&S "principally works on contingency fees" is equally dubious. One need only visit yellowpages.com and search "personal injury lawyer" for Las Vegas, Nevada to learn how many law firms advertise

[4] ABAjournal.com, https://www.abajournal.com/magazine/article/sharing_fees_with_a_lawyer_outside_the_firm_is_ok_as_long_as_certain_ethics (last visited May 7, 2021).

personal injury (contingency fee representation) in Las Vegas alone (641 law firms as of May 7, 2021).[5] Simply put, C&S's claimed "vested interest" can be better described as a universal legal industry connection.

More importantly, C&S's proposed Amicus Brief asserts three primary *insights* and/or *perspectives*: (1) the plain language of the governing rules control and contradict Cohen's position; (2) the public policy behind the foregoing governing rules supports Respondents' position; and (3) general logic and legal principles trump Cohen's alleged "promotion of uncertainty." Rather than contributing to the analysis from a *forest to leaves* perspective, C&S offers a reversed *forest to continent* contribution, *i.e., just like an attorney with no license cannot practice law, a motorist with no driver's license cannot drive.*[6] C&S's first two *insights* are thoroughly covered by Respondents' Answering Brief.[7] C&S admits as much using the following introductory phrases while segueing into two of its *insights*: "as [Respondents] points out" and "[a]s the answering brief points out . . ."[8] The governing law does not permit amicus briefs to "point out" existing arguments. "The vast majority of amicus curiae briefs are filed by allies of litigants

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[5] Personal Injury Lawyer in Las Vegas, Nevada, Yellowpages.com (2021), https://www.yellowpages.com/search?search_terms=personal+injury+lawyer&go_location_terms=Las+Vegas%2C+NV (last visited May 7, 2021).
[6] *See* C&S's proposed Amicus Curiae Brief on file herein at page 8.
[7] *See* Respondent's Answering Brief on file herein at Sections V(B) and V(D).
[8] *See* C&S's proposed Amicus Curiae Brief on file herein at pages 2 and 4.

and duplicate the arguments [and] . . . ***[s]uch amicus briefs should not be allowed.*** *Long*, 49 F. Supp. 2d at 1178 (quoting *Ryan*, 125 F.3d at 1063) (emphasis added).

C&S's final *insight* or *perspective* (citing to logic, definitions and generalized legal principles) is clearly fabricated for the purposes of satisfying the new and unique prong of an amicus analysis. The problem with C&S's final *insight* is that it is supposed to be *useful*. Courts grant leave to appear as an amicus if the information offered is "**useful**." *Long*, 49 F. Supp. 2d at 1178 (quoting *Waste Management*, 162 F.R.D. at 36) (emphasis added). C&S's assertion of *Black's Law Dictionary* for purposes of defining "rule of law" and "license" is not even remotely relevant to the specific issues at bar. Amicus briefs are supposed to supplement the record and "aid the court" with "insights not available from the parties." *Soos*, 470 F. Supp. at 268. Digressing into general definitions of the involved legal terms and principles is clearly not insightful, useful *or even relevant*.

C. C&S'S MOTION SHOULD BE DENIED AS C&S HAS A CLEAR CONFLICT OF INTEREST.

"Historically, . . . an amicus curiae is [] impartial." *Leigh v. Engle*, 535 F. Supp. 418, 420 (N.D. Ill. 1982). "The term 'amicus curiae' means friend of the court, not friend of a party." *Long*, 49 F. Supp. 2d 1177, 1178 (quoting *Ryan*, 125 F.3d at 1063). Cohen initiated the underlying lawsuit through Liane Wakayama, Esq. in November 2018 while she was a director with Marquis Aurbach Coffing

("MAC").[9] At this time, Micah Echols, Esq. was also a director at MAC until his departure from the firm in December 2019. (*See id.* at ¶ 4).

As a matter of practice, the shareholders/directors at MAC would meet once per week every Tuesday from approximately 12:00 p.m. to 1:00 p.m. for "Director Meetings." (*See id.* at ¶ 5). The purpose of these meetings was to provide an open and confidential forum for the directors of MAC to review, discuss and strategize action in all pending litigation cases. (*See id.* at ¶ 6). There were approximately 48 Director Meetings held at MAC's offices while MAC represented Cohen during Mr. Echols' final year with the firm. (*See id.* at ¶ 7). Over the course of the foregoing approximate 48 Director Meetings, the Cohen case was routinely discussed during Director Meetings in which Mr. Echols was present. (*See id.* at ¶ 7). The directors of MAC discussed issues pertaining to the value of the case as well as cost expenditures. (*See id.* at ¶ 7). At times, the directors brainstormed case strategy as well as the strengths and weaknesses of the case. (*See id.* at ¶ 7). Mr. Echols was regularly present for and was exposed to the foregoing exchange of confidential and material information about this case. (*See id.* at ¶ 8). There is no question that throughout his final year as a director of MAC, Mr. Echols acquired confidential and sensitive information that is material to this case. Now, in derogation of his

[9] *See* Declaration of Liane K. Wakayama, Esq. attached as **Exhibit 1** at ¶ 3.

professional responsibilities and duties to Cohen,[10] Mr. Echols seeks to intervene in this case against Cohen, a former client of his.

Further, this conflict is imputed to Mr. Echols' entire firm pursuant to NRPC 1.10. Under NRPC 1.10(e), when a lawyer becomes associated with a new firm, no lawyer in that new firm may represent a person in a matter in which the joining lawyer is disqualified under NRPC 1.9 unless certain conditions are met. First, the disqualified lawyer must not have had a substantial role or primary responsibility in the matter. Second, the disqualified lawyer must be timely screened from any participation in the matter and receive no portion of the fee. Lastly, the firm must promptly provide the former client of the disqualified lawyer written notice that would permit the former client to determine whether the firm was complying with NRPC 1.10. In this matter, C&S has obviously not screened Mr. Echols from this matter at all, as he is the attorney signing the very motion *as well as the proposed Amicus Curiae Brief* that is adverse to his former client. On top of that, C&S has not provided any written notice to Cohen as required by NRPC 1.10(e)(3). (*See* **Ex. 1** at ¶ 10). As a result, Mr. Echols' conflict of interest is imputed to C&S as a whole, and C&S should be barred from taking an adverse position to Cohen in this matter.

[10] Significantly, Cohen does not consent to her former attorney's (Micah Echols) adoption and championing of a position that is directly adverse to her position in the same case in which he previously represented her. *See* **Ex. 1** at ¶ 9.

III. CONCLUSION.

Based on the foregoing, Appellant respectfully requests that this Court deny the Motion for Leave to File Amicus Curiae Brief of South Asian Bar Association of Las Vegas, Veterans in Politics International, Inc. and Jay Bloom.

DATED this 7th day of May, 2021.

HAYES | WAKAYAMA

By */s/ Liane K. Wakayama, Esq.*
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF CLAGGETT & SYKES LAW FIRM** was filed electronically with the Nevada Supreme Court on the 7th day of May, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Exhibit 1

DECLARATION IN SUPPORT OF APPELLANT'S OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS BRIEF OF CLAGGETT & SYKES LAW FIRM

Liane K. Wakayama, Esq., declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I make this Declaration in Support of Appellant Ruth Cohen's ("Cohen") Opposition to the Motion For Leave to File Amicus Brief of Claggett & Sykes Law Firm (the "Motion").

3. In November 2018, Cohen retained my former firm, the law firm of Marquis Aurbach Coffing ("MAC"), to represent her interests against the Respondents while I was a Director with MAC.

4. At this time, Mr. Micah Echols and I were directors at MAC. In or about December 2019, Mr. Echols left MAC to work with the Claggett & Sykes Law Firm.

5. While Mr. Echols and I were at MAC, the shareholders/directors would meet once per week every Tuesday from approximately 12:00 p.m. to 1:00 p.m. for "Director Meetings."

6. The purpose of these meetings was to provide an open and confidential forum for the directors of MAC to review, discuss and strategize pending litigation cases, among other things.

7. There were approximately 48 Director Meetings held at MAC's offices while MAC represented Cohen during Mr. Echols' final year with the firm. At some of these meetings, Cohen's case would be discussed from the facts and circumstances behind the claims to confidential information such as the specific legal strategies to be employed in pursuing Cohen's claims. In addition, the value and costs associated with Cohen's case were discussed.

8. Mr. Echols was present at the meetings where Cohen's case was discussed in detail and in confidence.

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9. Ms. Cohen has not and does not consent to Mr. Echols' adverse representation in this matter.

10. Ms. Cohen was not provided any written notice from C&S as required by NRPC 1.10(e)(3).

Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 7th day of May, 2021.

Liane K. Wakayama, Esq.

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