No. 10-63

In The
Supreme Court of the United States

CORY R. MAPLES,
Petitioner,

v.

KIM T. THOMAS,
Interim Commissioner, ALABAMA
DEPARTMENT OF CORRECTIONS,
Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF OF LEGAL ETHICS PROFESSORS AND PRACTITIONERS AND THE ETHICS BUREAU AT YALE AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

LAWRENCE J. FOX
Counsel of Record
DRINKER BIDDLE &
REATH LLP
One Logan Square
Suite 2000
Philadelphia, PA 19103
(215) 988-2700
Lawrence.Fox@dbr.com
Counsel for Amici Curiae

SUSAN D. REECE MARTYN
Stoepler Professor of
Law and Values
UNIVERSITY OF TOLEDO
COLLEGE OF LAW
2801 West Bancroft Street
Toledo, OH 43606
(419) 530-4212
susan.martyn@utoledo.edu
Counsel for Amici Curiae

Dated: May 25, 2011

THE LEX GROUP[DC] ♦ 1825 K Street, N.W. ♦ Suite 103 ♦ Washington, D.C. 20006
(202) 955-0001 ♦ (800) 856-4419 ♦ Fax: (202) 955-0022 ♦ www.thelexgroup.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

RULES

OTHER AUTHORITIES

INTEREST OF AMICI CURIAE[1]

Amici Curiae have an interest in assisting this Court in recognizing the professional ethical obligations of counsel for a convicted individual on death row in a habeas corpus proceeding to obey client instructions, communicate material information to the client, withdraw from a representation only upon notice to the client and approval by the court, as well as the extraordinary circumstances that arise if counsel fails to fulfill those duties to the client, flouts counsel's obligations to the court and abandons the client, severing the lawyer-client relationship.

The brief of *Amici Curiae* will not address every point argued by the parties. Instead, *Amici Curiae* focus on the professional responsibility issues described above.

Because of the large number of *amici curiae* the names and brief descriptions of these individuals and the Ethics Bureau at Yale are attached as an appendix.

---

[1] Pursuant to Rule 37.2 of the Rules of this Court, the parties have consented to the filing of this brief. The letters granting consent are filed herewith. This brief was not written in whole or in part by counsel for any party, and no person or entity other than *Amici Curiae* and their counsel has made a monetary contribution to the preparation and submission of this brief. The *Amici Curiae* and their counsel are grateful to Kathryn Boudouris, Michael Drezner, Alexander Fenner, Ramya Kasturi, Lawrence Kornreich, Stephanie Turner, and Carleen Zubrzycki, Yale Law School students, and Breanne Democko, Toledo Law student, for their assistance in preparing this brief.

STATEMENT OF THE CASE

Petitioner Cory Maples, convicted of capital murder, initiated state post-conviction proceedings in which Mr. Maples sought review of his 1997 conviction and death sentence. He argued that his trial counsel had been grossly ineffective. Pet'r's Cert. Pet. 3. In 2001, two Sullivan and Cromwell lawyers, Ms. Clara Ingen-Housz and Mr. Jaasi Munanka, appeared in Alabama state court as counsel *pro hac vice* for Mr. Maples, having had their admission supported by required local counsel, Mr. John Butler, whose only participation in the matter was facilitating the *pro hac* admission of Ms. Ingen-Housz and Mr. Munanka. App. to Pet'r's Cert Pet. 257a. Both lawyers were junior associates at the firm; both had practiced law for less than two years.[2] Ms. Ingen-Housz and Mr. Munanka may have worked with other Sullivan & Cromwell lawyers on the case. *See id.* at 257a. They provided the Alabama court with the address of the Sullivan & Cromwell office at 125 Broad Street in New York City. They filed a state habeas petition on August 1, 2001 (cert pet 5). In the summer of 2002, while this petition was pending before the Alabama trial court, both Ms. Ingen-Housz and Mr. Munanka left Sullivan & Cromwell, without notifying the court of their departure. *Id.* at 258a. Although other lawyers at Sullivan & Cromwell were "involved" in

---

[2] Ms. Ingen-Housz was admitted to the New York bar in 2000. *See* Baker & McKenzie, Clara Ingen-Housz, http://www.bakermckenzie.com/claraingen-housz (last visited May 7, 2011). Mr. Munanka graduated from the University of Michigan Law School in 1999. *See* Hogan Lovells, Jaasi J. Munanka, http://www.hoganlovells.com/jaasi-munanka/ (last visited May 7, 2011).

the case, *Id.* at 257a, the firm did not inform the trial court that Ms. Ingen-Housz and Mr. Munanka had left, nor did any new Sullivan & Cromwell lawyer ever enter an appearance before the trial court until after the unfortunate events that give rise to this appeal. *Id.* at 258a.

The Alabama trial court denied Mr. Maples's petition on May 22, 2003. It sent copies of its order denying relief to Ms. Ingen-Housz and Mr. Munanka at their Sullivan & Cromwell addresses. Pet'r's Cert. Pet. 6. It also sent a copy of the order to Mr. John Butler, Mr. Maples's local counsel in Alabama. The envelopes addressed to the Sullivan & Cromwell associates (who had left the firm about 10 months earlier) were returned unopened to the Alabama trial court clerk. *Id.* Mr. Butler, who had explicitly refused to accept any further role in the case, received the order but took no action regarding it. App. to Pet'r's Cert. Pet. 255a.

The Alabama Rules of Appellate Procedure allow state habeas petitioners 42 days to appeal orders denying relief. *See* Ala. R. App. P. 4(a)(1). Sullivan & Cromwell did not file an appeal before this period expired. Mr. Maples learned that his petition had been denied and that the period to appeal had expired from a state prosecutor, who wrote him a letter informing him of these "recent events" in August 2003. Pet'r's Cert. Pet. 7. Mr. Maples promptly alerted his stepmother, who immediately called Sullivan & Cromwell. With sudden interest in the case, lawyers from the firm then unsuccessfully sought leave to file an appeal in the state proceeding. *Id.* at 7. On August 29, 2003, Mr. Maples filed a federal habeas petition. The

district court denied the petition on the grounds of the state court default, and Mr. Maples appealed. *Id.* at 8. A divided panel of the Court of Appeals for the Eleventh Circuit affirmed, extinguishing Mr. Maples's last opportunity to challenge his conviction and death sentence. *Id.*

SUMMARY OF ARGUMENT

Amici Curiae file this brief to address key issues that, by virtue of *Amici Curiae*'s special background, expertise and teaching in the area of lawyer ethics and professional responsibility, might assist the Court in evaluating the behavior of all lawyers in this matter.

Any one abandonment – by Sullivan & Cromwell's two associates, by local counsel, or by Sullivan & Cromwell's other lawyers—would have warranted relief for Mr. Maples. Here, depending on how one counts, there were at least three abandonments that independently created this devastating train wreck that has left Mr. Maples in extremis.

First, *Amici Curiae* will explain how, accepting responsibility for Mr. Maples's case without limitation, qualification or reservation, two of the firm's associates proceeded to abandon the client when the young lawyers left, without notice to the court. Then, Sullivan & Cromwell's other lawyers, knowing of this departure and having been involved in the case for over a year, perpetuated the abandonment of Mr. Maples by ignoring the firm's fundamental obligations to court and client.

Second, *Amici Curiae* will show how local counsel abandoned Mr. Maples, usurping the role of the client by defining the objectives of the representation to assign himself no responsibility whatsoever, thereby unethically limiting the scope of the representation without notifying, let alone securing, the consent of either the court or his client.

Third, *Amici Curiae* will address the *post hoc* justification for its behavior that Sullivan & Cromwell unfortunately adopted. The firm made the incredible claim, based on its "individual capacity representation" construct, that the firm was never responsible for the case and that the firm had no obligations to Mr. Maples upon learning that his two inexperienced lawyers were departing from the firm. And despite the admitted involvement of its several other lawyers, Sullivan & Cromwell denied any duty to find replacement counsel for the client. Indeed, Sullivan & Cromwell's effort – after reentering the case after Mr. Maples's appeal deadline passed – seems primarily aimed not at protecting Mr. Maples, but rather at absolving itself from the blame for abandoning its client.

Mr. Maples should not be denied his entitlement to proceed because of the professional misconduct of his lawyers; for this to occur, particularly in a capital case, would be the gravest injustice.

ARGUMENT

I. Sullivan & Cromwell Abandoned its Client Under the Most Extraordinary Circumstances

This case presents an inexplicable case of lawyers initiating an important – no critical – representation of a client on death row, then abandoning the client without notification. In the process, these lawyers engaged in a frontal assault on almost all of the most important fiduciary duties they were required to fulfill. These duties are celebrated in the common law, enshrined in our rules of professional conduct, and are codified in the Restatement of the Law Governing Lawyers, three definitive sources of authority from which any professional responsibility analysis should proceed.

A. Lawyer Fiduciary Duties to Clients

As the Court approaches this case it should have in mind the exact nature of the duties *Amici Curiae* recognize as having been violated here. First, when a lawyer undertakes a case, the lawyer must act with reasonable competence and diligence to carry it through to conclusion. Ala. R. Prof'l Conduct R. 1.1, 1.3, 1.16 Comment (2002); Restatement (Third) of the Law Governing Lawyers § 16(2) (2000) [hereinafter RLGL]. Second, failure to notify a client when a lawyer leaves a firm or ceases working on a matter violates a lawyer's duty to communicate directly with the client about the status of the case. Ala. R. Prof'l Conduct R. 1.4 (2002), RLGL § 20 (2000). Third, a lawyer is only relieved of these obligations when the relationship is

terminated in a manner consistent with the requirements of Rule 1.16. Ala. R. Prof'l Conduct R. 1.3 Comment (2002); RLGL § 14 cmt. b (2000). Fourth, Rule 1.16 requires the tribunal's permission to withdraw, and protection of the client's interests to terminate a representation. Ala. R. Prof'l Conduct R. 1.16(c), (d) (2002); RLGL §§ 31, 32 (2000). Finally, all of these obligations apply in the same measure to appointed as well as retained lawyers. Ala. R. Prof'l Conduct R. 6.2 Comment (2002); RLGL § 14 (2000).

Lawyers who violate these rules abandon their clients and are subject to severe professional sanctions. *See, e.g., In re Vaughan*, 801 So. 2d 1058 (La. 2001) (lawyer suspended from practice for three years for abandoning his client in violation of Rules of Professional Conduct 1.3, 1.4 and 1.16 by closing office without notifying client), *People v. Elliott*, 39 P. 3d 551 (Colo. 2000) (lawyer disbarred for abandoning two clients in violation of Rules of Professional Conduct 1.3 and 1.4 by agreeing to provide specific professional services, failing to provide the services and failing to protect his clients or to communicate with them regarding the matters he was handling), *Fla. Bar v. King*, 664 So. 2d 925 (Fla. 1995) (lawyer suspended from practice for three years for taking on a case and ceasing communication with a client without following procedures for withdrawal in violation of Rules of Professional Conduct 1.1, 1.3, 1.4 and 1.16).[3]

---

[3] Rules of Professional Conduct 1.1, 1.3, 1.4 and 1.16, violated in these cases, were all adopted by the Alabama Supreme Court and were in effect at the times in question. It is the Alabama

B. Sullivan & Cromwell's Responsibilities

Respondent asserts that even if Mr. Maples was abandoned by the two young Sullivan & Cromwell associates and by local counsel, he was not abandoned by Sullivan & Cromwell, which allegedly had other firm lawyers "involved" in the matter from 2001.[4] For sure, Mr. Maples's two pro bono attorneys of record, as lawyers, had these professional duties to the client for whom they entered an appearance and to the court before whom they appeared, duties they systematically violated;[5] but to the extent that Respondent tries to shift the focus to other lawyers, that does not diminish the responsibility of Sullivan & Cromwell itself.

---

rules that would apply here because the professional responsibility rules of the forum state apply in matters pending before a tribunal. *See* Ala. R. Prof'l Conduct R. 8.5(b) (2002).

[4] One of Sullivan & Cromwell's partners states: "I have been involved in this case since the summer of 2001," a year before Sullivan & Cromwell's associates left the firm. De Leeuw Aff. ¶ 1. His affidavit fails to define what "involvement" meant. The same partner asserts that after the associates left the firm in the summer of 2002, "other lawyers at S&C have worked on the case." De Leeuw Aff. ¶ 5. Later, however, Mr. DeLeeuw told the Eleventh Circuit that he and any other lawyers involved in the case before the default were "just waiting for any further proceedings." Ultimately, the record does not disclose what, if anything, these lawyers actually did after the associates left and before the default.

[5] The Alabama Rules of Professional Conduct, like the rules of virtually every jurisdiction, provide that a lawyer, no matter how junior, has an independent obligation to conform the lawyer's conduct to the rules. "A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person." Ala. R. Prof'l Conduct R. 5.2.

Perhaps Respondent takes some comfort from the allegation that Sullivan & Cromwell allegedly had other firm lawyers "involved" in the matter from 2001. Or from the Eleventh Circuit observation that "Maples's Sullivan & Cromwell attorney acknowledged at oral argument [that] arrangements had been made within the firm for other attorneys at Sullivan & Cromwell to take over representation of Maples." *Maples v. Allen*, 586 F.3d 879, 884 (11th Cir. 2009). But whatever way the Sullivan & Cromwell role is characterized, the fact is that Sullivan & Cromwell, the law firm, abandoned Mr. Maples, leaving him without counsel of record and without any lawyer at all from the time the associates left the firm until after the appeal deadline passed. Put simply, after the associates departed, Sullivan & Cromwell relinquished responsibility for Mr. Maples, springing into action only after the results of the abandonment became clear. Only then did Sullivan & Cromwell take steps, but those step transparently reflected the firm's conflict of interest.

Despite conceding some "involvement" in the matter, the firm's partners told the Alabama Court that when Sullivan & Cromwell lawyers took on pro bono matters – and this rule applied inexplicably only to pro bono matters – they did so in their individual capacity.[6] It is not clear to *Amici Curiae* why the firm took this approach or why the firm

[6] "Lawyers at S&C handle *pro bono* cases on an individual basis. Accordingly, the lawyers who first appeared in this case, and all lawyers who have participated thereafter, have done so on an individual basis, and have attempted not to use the firm name on correspondence or court papers." DeLeeuw Aff. ¶ 2.

attached any ethical significance to this unusual assertion. From a professional responsibility point of view it was not only irrelevant, it contradicted the requirements of the rules that required Sullivan & Cromwell to provide supervision and take responsibility over inexperienced lawyers. Ala. R. Prof'l Conduct R. 5.1(a) (2002) ("A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct."); *see also* RLGL § 31 cmt. f (2000) ("When a client retains a lawyer who practices with a firm, the presumption is that both the lawyer and the firm have been retained (see § 14, cmt. h). Hence, when a lawyer involved in a representation leaves the firm, the client can ordinarily choose whether to be represented by that lawyer, by lawyers remaining at the firm, by neither, or by both. . . . When a lawyer leaves a large firm, for example, it can usually be assumed that, absent contrary client instructions or previous contract, the firm continues to represent the client in pending representations and the lawyer does not.").

It also contradicted Sullivan & Cromwell's own identification of pro bono cases in a pro bono questionnaire. Asked to "list up to three pro bono matters that are representative of the pro bono work *your firm* participates in," (emphasis supplied) Sullivan & Cromwell, the law firm, answered listing numerous pro bono matters including three capital cases, one in Alabama, presumably the *Maples* case. *Vault Guide to Law Firm Pro Bono Programs* 674 (3d ed. 2007).

Indeed, the record belies the assertion that Sullivan & Cromwell's lawyers represented Mr. Maples in an individual capacity. Simply consider the following. These two lawyers were employed full time by Sullivan & Cromwell. Their offices were at Sullivan & Cromwell. Their address was Sullivan & Cromwell's address. Their email addresses were at Sullivan & Cromwell's domain. They were on the Sullivan & Cromwell payroll, were listed on the Sullivan & Cromwell website as Sullivan & Cromwell lawyers, used Sullivan & Cromwell stationery, computer systems, desks and library, undoubtedly billed all their time, including this pro bono time, to the Sullivan & Cromwell timekeeper accounting system, hours that Sullivan & Cromwell reported to the world in pro bono surveys of top firms.[7] Moreover, Sullivan & Cromwell, as a firm, touts the Sullivan & Cromwell pro bono program and commitment.[8] As a result, despite the law firm's protestations to the contrary, any lawyer who works in Sullivan & Cromwell's offices at the now famous address – 125 Broad Street – is the responsibility, from a professional responsibility point of view, of Sullivan & Cromwell.

Given the foregoing, the conclusion is ineluctable that Sullivan & Cromwell abandoned Mr. Maples, particularly when this matter was undertaken without hesitancy, qualification or

---

[7] For example, Sullivan & Cromwell reported 30,025 pro bono hours in 2003. *Vault Guide to Law Firm Pro Bono Programs* 674 (3d ed. 2007).

[8] *See* Sullivan & Cromwell LLP (2005), http://www.sullcrom.com.

limitation,[9] a fact that stands in sharp contrast to local counsel's early abandonment of Mr. Maples, which local counsel claims occurred *ab initio*. Accordingly, Sullivan & Cromwell owed Mr. Maples all of the protections and services required by the Alabama Rules of Professional Conduct and, to the extent not inconsistent with these rules, by the New York Code of Professional Responsibility, as well as the fiduciary duties established in the common law. These were protections Mr. Maples had every right to expect to be fulfilled, requirements that were fulfilled, more or less, up to a critical juncture.[10]

---

[9] There is apparently no retainer letter between any Sullivan & Cromwell lawyers and Mr. Maples limiting the scope of the representation. Though it is doubtful that limiting the scope would have been ethically permissible if the firm had done so, the record is also devoid of any Sullivan & Cromwell notice to the client in any form that Sullivan & Cromwell had placed a scope limitation on the firm's representation of Mr. Maples.

[10] Three provisions in New York's Code of Professional Responsibility required law firm supervision of associates. They all applied here because these were New York lawyers and the applicable provisions were entirely consistent with and simply reinforced the cognate Alabama Rule 5.1 provisions:

(a) A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to the disciplinary rules.

(b) A lawyer with management responsibility in the law firm or direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer in the firm conforms to the disciplinary rules.

(c) A law firm shall adequately supervise, as appropriate, the work of partners, associates and non-lawyers who work at the firm. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is

C. The Associates' Abandonment

But then, when the young associates left for new positions, matters turned really ugly. These two young lawyers had entered appearances in a court of law, appearances that required a special motion and the acquiescence of the court, entries of appearance that led the client to believe that these lawyers were representing Mr. Maples, were his true champions, there to protect him at every turn.[11] And yet these two took not one step to notify the court before whom they had prayed for dispensation to appear – the very same court to which they made representations that, if the court needed to give the client notice of any developments in the case, the court should contact them by sending the mail to 125 Broad Street in New York City, New York, Sullivan & Cromwell's offices.[12]

---

being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter.

N.Y. Code Prof'l Resp. DR 1-104, 22 N.Y.C.R.R. § 1200.5 (2002).

[11] Ala. R. Crim. P. 6.2(b) required a "duty of continuing representation" unless counsel filed a written motion to withdraw, a procedure designed to protect the interests of the defendant and to allow the court to appoint new counsel. *See Esters v. State*, 894 So. 2d 755, 760-61 (Ala. Crim. App. 2003).

[12] It also appears from the record here that no one at Sullivan & Cromwell—associates or partners—ever contacted the client. If that is so, this is another professional violation of Alabama Rule 1.4 that only exacerbated the other breaches. But there is no need to resolve that issue at this juncture since the failures vis á vis the courts establish the abandonment.

This frontal assault on the court seems abandonment enough. Yet it is actually far worse than it appears at first blush. This is because the Alabama Rules of Professional Conduct, just like the ethics rules of every jurisdiction in America, do not permit a lawyer to withdraw from a matter before a tribunal, even if the lawyer has compelling grounds therefor, without notice to and permission of the court. These rules are designed to prevent both client abandonment and any affront on the dignity and processes of the court caused by an unapproved, let alone surreptitious, withdrawal.

So, if they wished to cease representing Petitioner, these young lawyers were obligated to withdraw in a manner consistent with the Alabama Rules of Professional Conduct and other applicable law. This would have involved notifying their client, Ala. R. Prof'l Conduct R. 1.4, 1.16 (2002); RLGL §§ 20, 33(1) (2000), seeking the court's permission to withdraw, and taking steps necessary to protect the client's interests. *See* 7A C.J.S. *Attorney & Client* § 270 (2011) (citing *Patterson v. State*, 288 So. 2d 446, 448 (Ala. 1974)) ("An attorney who has appeared as the attorney of record in a cause cannot effectively terminate the relation by withdrawal until he or she has made application to the court and obtained leave to make a formal withdrawal of record."); *cf. Esters v. State*, 894 So. 2d 755, 761-63 (Ala. Crim. App. 2003) (Alabama Rules of Criminal Procedure require a duty of continuing representation until the trial court grants a formal written motion to withdraw). Petitioner's lawyers failed to meet these standards when they left the case without substituting counsel or notifying the court of their departure. As a result, the two associates, who terminated their

representation of Mr. Maples when they left the firm, remained the only Sullivan & Cromwell counsel of record during this critical period. That abandonment is enough to establish cause to excuse the default.

D. Sullivan & Cromwell's Abandonment

The role of any other Sullivan & Cromwell, lawyers who were involved in the case, and the law firm itself, simply reinforces the dereliction. The firm had responsibility for its departing associates, this client and the case, Ala. R. Prof'l Conduct R. 5.1; RLGL § 14 cmt. h (2000) (client-lawyer relationships with law firms); RLGL § 58 (vicarious liability). The firm knew not only that these associates were leaving, but also knew that one was going to Belgium to work for the European Commission and the other to clerk for a federal judge in New York. The firm was on high profile actual notice that these two lawyers could not possibly take Mr. Maples's case – or, for that matter, any other Sullivan & Cromwell matter – with them.[13]

Nonetheless, the firm took no steps to make sure that the two departing lawyers told the court of their upcoming departures, took no steps to make sure court permission was obtained for their withdrawal, and failed to make sure that any substitute lawyers (even if they were going to allegedly work in their "individual capacity") petitioned for *pro hac vice* admission and

[13] While it is most likely that their departure, like most firm departures, was announced to everyone, at a minimum every partner who supervised these two associates in non-pro bono matters was well aware of these developments.

substitution of counsel. This was anything but gross negligence; it was the affirmative flouting of court procedures the ignoring of which is the very essence of abandonment. *See In re Kiley*, 459 Mass. 645 (2011).

In fact, all these steps not only had to be pursued, they had to be pursued quickly because an important proceeding – a capital case of all things – renders even a short abandonment of the client potentially a matter of life or death. Moreover, the fact that all of this could have been accomplished with little effort any time during the ten months before the long awaited decision came down, only adds to the tragedy of the consequences that followed.

Sullivan & Cromwell had about 300 days to make things right. Instead, the firm did nothing—thus abandoning Mr. Maples. That this elite firm of over 500 lawyers did not bestir itself for that long only compounds the seriousness of the client's abandonment. It is no stretch to conclude at that point that Sullivan & Cromwell had gone beyond abandonment, by exalting the discredited notion of individual responsibility of young, inexperienced, departed firm associates representing this death row inmate over the firm's fiduciary obligation to the client, sitting on death row.

The reasons for these rules are manifest. First, a lawyer "should not accept representation in a matter unless it can be performed competently, promptly, without conflict of interest and to completion." Ala. Rules of Prof'l Conduct R. 1.16 Comment (2002). The lawyer's client is entitled to

rely on that principle unless he is given notice to the contrary. Ala. Rules of Prof'l Conduct 1.3 Comment (2002) ("Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client."); RLGL § 19 (2000). Second, any right to withdraw can be trumped by the court's authority to order the lawyer to continue the representation. Ala. Rules of Prof'l Conduct R. 1.16(c) (2002); *see*, *e.g.*, *Patterson v. State*, 288 So. 2d at 448 (denial of right to withdraw is within trial court's discretion). This rule permits the court to discharge its own obligations: a lawyer's initial appearance "assures [the] court that [the] client's rights are being protected by a duly licensed member of the bar," and his motion to withdraw ensures "that the court may, if necessary, take steps to see that valuable rights are not thereby lost." *Myers v. Miss. State Bar*, 480 So. 2d 1080, 1092-93 (Miss. 1985), *cert. denied*, 479 U.S. 813 (1986) (affirming lawyer's two-year suspension from practice for failing to file a timely appeal on behalf of a criminal defendant client and failing to properly withdraw as counsel); RLGL § 32(5) (2000).

More generally, a lawyer must wind down a representation in a way that protects the interests of the lawyer's client. Ala. Rules of Prof'l Conduct R. 1.16(d) (2002); RLGL § 32(4) (2000). If withdrawal cannot be accomplished without a material adverse effect on the client's interests, and if a lawyer lacks good cause for withdrawal, the representation may not be terminated as a matter of professional responsibility. Ala. Rules of Prof'l Conduct R. 1.16(b) (2002); RLGL § 32(3) (2000). Even where withdrawal is justified, however, the lawyer seeking to withdraw must take protective steps to the extent

reasonably practicable. *Id.* R. 1.16(d). This includes "allowing time for employment of other counsel." *Id.* Moreover, a court may deny a motion to withdraw where substitute counsel has not been retained. *See*, *e.g.*, *Farkas v. Sadler*, 375 A.2d 960, 963 (R.I. 1977) (motion to withdraw properly denied where trial was underway and substitute counsel had not been retained). In addition, all parties must be notified of any substitution of counsel "so they can know upon whom to make service of orders." *Wait v. Second Judicial Dist. Court*, 407 P.2d 912, 915 (Nev. 1965).

The Sullivan & Cromwell lawyers ignored the ethical obligations surrounding the termination of a representation. They did not seek the court's permission to withdraw; they did not arrange for substitution of counsel; and they did not give Petitioner the opportunity to protect himself in a timely way. Rule 1.16 exists precisely to prevent this type of abuse and, ultimately, to prevent abandonment.

To compound these indignities, Respondent now asserts that Petitioner, who was the victim of his lawyers' disregard for the client, the rules and the courts, is somehow responsible for their misconduct. This cannot be true where Petitioner was unwittingly left with no representation whatsoever. Where counsel of record is not actually on the case, and has not secured substitute counsel of record, the client has been abandoned.

II. This Case is Not About the Mail Room

In the legal press this case has garnered outsized attention because a) it involved a high

profile law firm and b) the mailroom at Sullivan & Cromwell returned a letter from a court to the sender because the addressees were "no longer at firm." But this case, from a professional responsibility point of view, is not about the mailroom. Yes, it is unthinkable to *Amici Curiae* that the lawyers at Sullivan & Cromwell did not have in place procedures that required any correspondence from a court to a departed lawyer to be opened forthwith and the departed lawyer immediately notified of the contents (if in fact the departed lawyer took the matter with him or her) and arrange for prompt delivery as directed, forwarding the communication by overnight delivery because any other course would run the unnecessary risk that some deadline would lapse in the interim. Ala. Rules of Prof'l Conduct R. 5.3(a) (2002); N. Y. Code Prof'l Resp. DR 1-104(c), 22 N.Y.C.R.R. § 1200.5 (2002); RLGL § 32(3) (2000). But this was not abandonment; abandonment had long since taken place, when the two associates left and neither they nor any other Sullivan & Cromwell lawyer took one affirmative step vis á vis the court, creating a representational void which permitted this headline-grabbing sequence to occur. [14]

---

[14] Petitioner has explained at great length why, notwithstanding the misconduct of the Sullivan & Cromwell lawyers, the Clerk of the Court had independent responsibilities to assure that Mr. Maples was on notice of the returned order and the need to act promptly. The fact that the law firm did not have essential procedures in place to deal with mail addressed to departed lawyers does not obviate the independent failure on the part of the State.

III. Local Counsel Abandoned the Client

Although the multiple abandonments by Sullivan & Cromwell lawyers more than warrants relief for Mr. Maples, the abandonment by local counsel also suffices. That abandonment of Mr. Maples occurred when local counsel agreed to let Ms. Ingen-Housz and Mr. Munanka associate him as local counsel, while at the same time reaching an understanding (apparently with these same two inexperienced second year associates) that he would do no more in the case. So this was an abandonment *ab initio* and it was one that was forcefully and unabashedly announced to the New York lawyers. In other words, local counsel, unlike Sullivan & Cromwell, admitted that he severed whatever tenuous lawyer-client relationship he had established with Mr. Maples by simply entering his appearance and making the lone motion urging the Court to admit the out-of-staters to represent Mr. Maples. That alone would be enough to conclude that Mr. Maples was abandoned. But when this conduct is considered in a professional responsibility context, the extraordinary nature of this abandonment – shredding rules designed to prevent this very result – becomes even clearer.

First, the courts of Alabama had established a court rule governing the admission of lawyers not admitted to the Alabama bar, a rule similar to that established in most jurisdictions. Ala. Rules Governing Admission to the Ala. State Bar R. VII (2002) [hereinafter Ala. Bar Admission Rule]. It permitted, even welcomed, out-of-jurisdiction lawyers, but if, and only if, there was local counsel retained in the matter. Generally speaking, the

desire of the Alabama Court to guarantee such an arrangement is totally understandable. *See Piper v. S. Ct. of New Hampshire*, 470 U.S. 274 (1985) (encouraging adoption of such rules in lieu of prohibitions based on residency requirements). *cf.* Pet. 5, 30-31 n.4. Only local counsel is a member of the state bar. Only local counsel has been examined on Alabama law and procedure. Only local counsel knows the local judiciary, local customs and local court personnel. Only local counsel is within the jurisdiction for court hearings and conferences on short notice. Only local counsel can review the out-of-jurisdiction work product for the merits and conformity to local practice. In short, under then-existing rules of practice, local counsel was essential to maintaining the integrity of judicial proceedings into which out-of-state counsel wished to insert themselves.

To emphasize this important role, Alabama also adopted another rule which made local counsel responsible on a joint and several basis for everything that occurred in the proceeding in which foreign counsel appeared. Ala. Bar Admission Rule VII(c) (2002). One could not imagine a more pointed way of emphasizing the Alabama court's view of the critical nature of the local counsel role. The court warns local counsel that any lapses in the proceedings on local counsel's side of the matter will be the entire responsibility of the lawyer who agrees to assume that position as an officer of the court, a court that has adopted rules of professional conduct governing this and every aspect of how lawyers must fulfill their duties to clients and the courts to which out-of-state counsel, by virtue of the *pro hac* admission, are subject. Ala. Rules of Prof'l Conduct

R. 3.4(c) (2002) ("A lawyer shall not knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists").

Second, in entering into a lawyer-client relationship with Mr. Maples by filing his appearance in the matter, local counsel was bound by two sections of Rule 1.2 of the Alabama Rules of Professional Conduct. First, the rule required that the client define the objectives of the representation, Ala. Rules of Prof'l Conduct R. 1.2(a) (2002). Second, the rule prohibited the lawyer from imposing on the representation a scope limitation to which the client did not consent. *Id.* R. 1.2.(c). *See* RLGL § 19, cmt. c ("a contract limiting a lawyer's role during trial may require court approval.") Accordingly, Rule 1.2(c) required "consent after consultation" as a precondition to any scope limitation. *Id.* But here, with no consultation with court or the client, supposedly based on an undocumented agreement with Sullivan & Cromwell – a law firm which had absolutely no authority to agree – the local counsel limited the objectives of local counsel's representation to securing the admission of two New York lawyers. He then also limited the scope of the representation to that one item – local counsel even being unwilling to open and forward any mail that came his way – and concluded that was perfectly okay. In so doing, he affronted the dignity of the courts, violated the rule governing the responsibility of local counsel, breached every fiduciary duty he

owed his client and gave to this Court Exhibit 2 of a principal-agent relationship torn asunder. [15]

IV. Sullivan & Cromwell's Post-Default Conduct Ratified and Reinforced Its Earlier Abandonment

Sullivan & Cromwell indicates it learned of the disaster caused by its abandonment of Mr. Maples when his stepmother called the firm because she had learned of the adverse decision. One would expect that Sullivan & Cromwell then would have ended the firm's abandonment of the client by seeking to protect his interests. But it did not, and its actions just added to Mr. Maples's travails.

From the moment Sullivan & Cromwell learned of the tragic results caused by its abandonment of the client, the firm had an impossible conflict of interest. *See* Ala. Rules of Prof'l Conduct R. 1.7(b) (2002) ("A lawyer shall not represent a client if the representation of that client may be materially limited by . . . the lawyer's own interests")*; id.* R. 1.7 cmt. ("If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice."). And the conflict was non-waivable because no reasonable lawyer could conclude under these circumstances that he or she would be able to provide competent representation to the client. *Id.* R. 1.1.

---

[15] Even where allowed, special or limited appearances create professional relationships and obligations to clients. *See*, *e.g.*, *Streit v. Covington & Crowe*, 82 Cal. App. 4th 441 (2000).

Thus, in forging ahead, the firm violated the most fundamental duty owed by lawyers to their clients: the duty of loyalty. *See Strickland v. Washington*, 466 U.S. 668, 692 (1984) (stating that loyalty is "perhaps the most basic of counsel's duties"). Suddenly, the firm's ability to represent its client – already in tatters as a result of the firm's neglect of its fundamental duties to both court and client – was further compromised by the firm's interest in restoring its own reputation. And unlike so many other loyalty trangressions, here the effects on the firm's continued representation are manifest and devastating.

To start, as soon as the firm learned what had happened, it was required to notify the client of the conflict of interest and see to it that substitute counsel was retained who was not laboring under a conflict and who immediately could have raised the claim of Sullivan & Cromwell's abandonment in an unfettered way. *See* RLGL § 20 cmt. c (2000). ("If the lawyer's conduct of the matter gives the client a substantial malpractice claim against the lawyer, the lawyer must disclose that to the client."); *see also Olds v. Donnelly*, 696 A.2d 633, 643 (N.J. 1997) ("The Rules of Professional Conduct . . . require an attorney to notify the client that he or she may have a legal malpractice claim even if notification is against the attorney's own interest."); *In re Tallon*, 447 N.Y.S.2d 50, 51 (App. Div. 1982) ("An attorney has a professional duty to promptly notify his client of his failure to act and of the possible claim his client may thus have against him.").

The record does not reveal any suggestion that Sullivan & Cromwell ever discussed this course of

action with Mr. Maples, explained its conflict to the client, or suggested that the firm's own conduct might gave rise to its client's entitlement to relief from the missed deadline. The record is clear, however, that Sullivan and Cromwell did not arrange for independent counsel who could address these issues, at least until after the Eleventh Circuit's decision in the federal habeas action when new counsel for Mr. Maples entered its appearance. Instead, soon after the default, Sullivan & Cromwell lawyers entered their appearances in the case and proceeded to purport to represent Mr. Maples, who had no idea that a serious conflict now infected his lawyers' approach to securing him relief.

But even a cursory review of what happened next demonstrates that by now Sullivan & Cromwell was also representing its own interests, the client left without an unconflicted lawyer who could actually represent Mr. Maples and only Mr. Maples. Beyond the failure to recognize the conflict and find substitute counsel, three examples demonstrate this point.

First, Sullivan & Cromwell prepared an affidavit for Mr. Maples in which he swears: "My lawyers at Sullivan & Cromwell in New York didn't get the decision from the Alabama Court in time." Maples Aff. JA 253. One is flabbergasted to understand how Sullivan & Cromwell put those words in this client's affidavit. First, Mr. Maples was not a witness to what happened to the critical court document. Second, it was only because of the firm's prior abandonment that the communication, which went right to the Sullivan & Cromwell mail room, did not land on a Sullivan & Cromwell

lawyer's desk. And this is precisely what any law firm, other than Sullivan & Cromwell, would have put into Mr. Maples's affidavit: "It was my lawyers' abandonment of me that caused the missing of the deadline." Yet when one reads the Sullivan & Cromwell version it calls to mind the story of the little boy, holding an Oreo, standing beside the broken cookie jar, crying "it broke."

Second, the same affidavit has Mr. Maples reciting: "I don't think my lawyers did anything wrong." Maples Aff. JA 253. Again, how could Sullivan & Cromwell, representing Mr. Maple's interests, advise him to sign this exculpatory statement? Any other firm, not operating under an impossible conflict, would have put as much distance between Mr. Maples and his lawyers as possible, asserting that Sullivan & Cromwell did the client "wrong," abandoned him and for that reason the court should relieve the hapless, ignored, and misled client of the transgressions of his counsel.[16]

Third, no one from Sullivan & Cromwell stepped forward to take responsibility for the debacle. To the contrary, although Sullivan &

---

[16] Sullivan & Cromwell also violated the Alabama Rules of Professional Conduct in another way by having the client swear that his lawyers did not do anything wrong. Rule 1.8(n) provides in relevant part: "A lawyer shall not … settle a claim for [malpractice] liability with an unrepresented client … without first advising that person in writing that independent representation is appropriate therewith." Here the "settlement" was worse because the client not only was misled into blessing his lawyer's conduct, he also was persuaded to arguably waive his strongest argument for relief from the missed deadline. Ala. Rules of Prof'l Conduct R. 1.8(n) (2002).

Cromwell represented to the court that other lawyers at the firm were involved with the representation at the time of the crucial departure, *not one of them* took responsibility for the default. Nor did they concede that abandonment is what occurred here. Mr. DeLeeuw says he was involved in the case from well before the event in question;[17] but his affidavit is otherwise devoid of any explanation of what the word "involved" means, and he also told the Eleventh Circuit that the S&C attorneys were just "awaiting any further proceedings." Nor is there any assumption of responsibility or culpability, something any unconflicted lawyer would have immediately identified, criticized, argued from, and based requested relief for Mr. Maples upon – just as *Amici Curiae* have done here.

V. Sullivan & Cromwell's *Post Hoc* Justification Reflects Unethical Conduct

When the detailed facts of how Sullivan & Cromwell handled this particular matter (to the extent they are reflected in the record)[18] are considered, Sullivan & Cromwell's conduct becomes even more problematic. This was a habeas corpus proceeding on behalf of a client convicted of capital murder, the brain surgery of legal matters. No law firm could reasonably conclude – without a direct

---

[17] "I have been involved in this case since the summer of 2001." DeLeeuw Aff. ¶ 1.

[18] The record is hardly complete, in part because Sullivan & Cromwell, has not provided the Alabama courts with a complete account of what occurred.

violation of the applicable rules of professional conduct – that it would permit two first or second year associates, essentially fresh out of law school without apparent supervision, to handle this matter, ironically a matter whose centerpiece was the fact that trial counsel told the jury they "may appear to be stumbling around in the dark." R. 3081-82. Indeed, both Rule 5.1 of the Alabama Rules of Professional Conduct and New York's DR 1-104 made this clear.[19] Sullivan & Cromwell's awkward attempts, therefore, to put space between the responsibility of the two departing lawyers and Sullivan & Cromwell, from a professional responsibility point of view, must be totally unavailing.[20]

Mr. Maples, facing a sentence of death – with only a successful habeas proceeding standing between him and lethal injection – apparently was supposed to rely on two first year associates to handle this matter. Taking the idea that all pro bono matters are handled on an individual basis to an unfortunate limit, Sullivan & Cromwell, it would appear, decided that Mr. Maples's case was so elementary, demanding so little by way of

---

[19] *See also* RLGL § 11 (2000).

[20] Surprisingly, Sullivan & Cromwell seems to admit lack of supervision in pro bono matters. The firm told Vault Guide to Law Firm Pro Bono Programs in answer to the question, "Is there partner supervision on all pro bono matters?" "At least one partner is available to answer questions and discuss issues that arise." That, in the view of *Amici Curiae*, is not the supervision required of the applicable rules and standard of care. *Vault Guide to Law Firm Pro Bono Programs* 674 (3d ed. 2007).

background or experience, it could be assumed by its most junior lawyers, those at the bottom of the experience curve, with not one partner entering an appearance for the client. Of course, the client did not know how unlikely it would be that any non-pro bono client of the firm would go partner-less on any complex litigated matter, let alone one where life or death was at stake. Nor was the client likely to appreciate the inexperience of his lawyers or recognize how rule-violating such an approach was. Ala. R. Prof'l Conduct R. 5.1(a) (2002) ("A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct."); Ala. R. Prof'l Conduct R. 6.2 Comment (2002) ("An appointed lawyer has the same obligations to the client as retained counsel"). As a result, one can easily see how Sullivan & Cromwell ran right through the red light of the self-evident standard of care which required the firm to staff the matter properly from the beginning.

To make matters worse, Respondent asserts that during the federal habeas proceedings Sullivan & Cromwell waived the argument that Maples was abandoned by Sullivan & Cromwell lawyers. Petitioner has explained why, despite this assertion, the question presented is properly before the Court. Especially given the obvious conflict of interest under which Sullivan & Cromwell was proceeding in the federal habeas action, it would be entirely inappropriate to say that these arguments were waived by the very lawyers who did the abandoning, thereby only adding to the unthinkable predicament

that Mr. Maples now faces as the result of his abandonment by counsel.

VI. Conclusion

The forgoing is a sad tale, one *Amici Curiae* take no pleasure in addressing. But it also is not the end of the story. In *Amici Curiae*'s view, the sins of the lawyer should never be visited upon the client because the lawyer-client relationship is different in kind from that of other principal-agency relationships. That is particularly so in a capital case where the remedy of suing the lawyer for breach of fiduciary duty provides no remedy at all. But this Court need not go there, because in this case the abandonment of Mr. Maples by all his lawyers left him with no agents—none at all—to represent his interests at this most critical of junctures. As a result, there is no basis for asserting that Mr. Maples should be stuck with the terrible consequences of not being represented by counsel.

Respectfully Submitted

LAWRENCE J. FOX
Counsel of Record
DRINKER BIDDLE & REATH LLP
One Logan Square, Suite 2000
Philadelphia, Pennsylvania 19103
(215) 988-2700
Lawrence.Fox@dbr.com

Counsel for Amici Curiae

SUSAN D. REECE MARTYN
Stoepler Professor of Law and Values
UNIVERSITY OF TOLEDO COLLEGE OF LAW
2801 West Bancroft Street
Toledo, Ohio 43606
(419) 530-4212
SUSAN.MARTYN@utoledo.edu

Counsel for Amici Curiae

APPENDIX

Appendix A

IDENTITY OF AMICI CURIAE

Richard Abel is Michael J. Connell Professor of Law Emeritus at U.C.L.A. He is the author of many books, including *Lawyers in the Dock: Learning from Attorney Disciplinary Proceedings* (2008).

Aviva Abramovsky teaches Professional Responsibility and is the Associate Dean for Special Projects and an Associate Professor of Law at Syracuse University College of Law.

Dr. Gregory B. Adams has been a law professor at the University of South Carolina School of Law for more than 30 years. He specializes in lawyers' and judges' ethics, subjects on which he is a recognized expert. He is also the founding Director of the Program on Judicial Ethics, Selection, Accountability & Independence.

James J. Alfini is Dean Emeritus and Professor of Law at South Texas College of Law, where he served as President and Dean from 2003 to 2009. He is widely published in the field of judicial ethics and is a co-author of *Judicial Conduct and Ethics*, published by Lexis and in its 4th Edition (2007).

James Ellis Arden is a member of the Association of Professional Responsibility Lawyers and the Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association.

Robert H. Aronson was a Commissioner on Uniform State Laws for 15 years and has been a

member of the Washington Legislative Ethics Board. From 1987-1994, he was a member of the National Conference of Bar Examiners Multistate Professional Responsibility Exam Drafting Committee. In 1991, he was Chair of the Association of American Law Schools Professional Responsibility Section. He is a co-author of a casebook, *Problems, Cases and Materials on Professional Responsibility* (West 1985; 2nd ed. 1995; 3rd ed., 2004) and a book, *Professional Responsibility in a Nutshell* (West, 1980; 2nd ed., 1991).

Robert Ashford is a Professor of Law at Syracuse University College of Law and the founder and principal organizer of the Section on Socio-Economics of the Association of American Law Schools. He is also a member of the Editorial Board of the Journal of Socio-Economics, the American Law Institute, and the Athens Institute for Education and Research. His subjects include Binary Economics, Business Associations, Public Corporations, Professional Responsibility, Secured Transactions, and Securities Regulation.

Benjamin H. Barton is the Director of Clinical Programs and a Professor of Law at the University of Tennessee College of Law. Cambridge University Press recently published his book, *The Lawyer-Judge Bias in the American Courts*, and he is the winner of the 2010 LSAC Philip D. Shelton Award for outstanding research in legal education.

Debra Lyn Bassett is the Justice Marshall F. McComb Professor of Law at Southwestern Law School in Los Angeles, California. She is a co-author of a Professional Responsibility Casebook, *Problems*

in Legal Ethics (with Schwartz, Wydick & Perschbacher) (2010).

Susan J. Becker is a Professor who teaches Legal Profession, Civil Procedure and other courses from a practice-oriented perspective at Cleveland-Marshall College of Law. She is a co-author of *The Law of Professional Conduct in Ohio* (Lexis-Nexis 2009-2010).

Paul D. Bennett is a Clinical Professor of Law at the University of Arizona. He has been teaching Professional Responsibility at Arizona for the last 14 years and has taught Professional Responsibility at the University of San Diego and the University of Washington. In 2006 he received the President's Award from the State Bar of Arizona for co-chairing its Task Force on Professionalism.

Laura Berend is a Professor at the University of San Diego where she teaches Criminal Justice and Ethics in Criminal Practice.

Richard Bourne is a Professor of Law at the University of Baltimore where he teaches Professional Responsibility, Civil Procedure, and Remedies.

William J. Bridge has been a Professor of Law at Southern Methodist University Dedman School of Law since 1977, teaching Professional Responsibility, Evidence, Criminal Law, and Comparative Law.

Darren R. Cantor has represented and advised Respondents in the Colorado disciplinary process

since 2001. where he has taught ethics to lawyers, conducted CLE's for the Colorado Bar Association, Colorado Women's Bar Association, and Colorado Criminal Defense Bar throughout that time, in addition to his criminal defense practice in the state and federal courts.

Robert F. Cochran, Jr. is Louis D. Brandeis Professor of Law and Director of the Herbert and Elinor Nootbaar Institute on Law, Religion, and Ethics at Pepperdine University School of Law. He is the co-author of *Lawyers, Clients and Moral Responsibility* (2009) and *Cases and Materials on The Legal Profession* (2003).

Sherman L. Cohn is a Professor of Law at Georgetown University Law Center. He has served for the U.S. Department of Justice from 1958 to 1965. From 1957 to 1958, he was a Law Clerk to the Honorable Charles Fahy, U.S. Court of Appeals for the D.C. Circuit. Professor Cohn was also the President of American Inns of Court from 1985 to 1994.

Liz Ryan Cole is Professor and Director of The Semester in Practice (SiP) at Vermont Law School where she teaches Legal Ethics in the Practice of Law both as a component of the SiP practicum, and as a stand-alone course in the classroom.

Teresa S. Collett is a Professor of Law at the University of St. Thomas School of Law in Minnesota. She is an elected member of the American Law Institute and the co-author of a textbook on the professional responsibilities of lawyers.

Robin Morris Collin is Norma J. Paulus Professor of Law at Willamette University College of Law, where she teaches Legal Profession, Remedies, and Criminal Justice.

Roger C. Cramton is Robert S. Stevens Professor Emeritus Professor of Law and former Dean at Cornell Law School. He is the co-author of *The Law and Ethics of Lawyering* (2010) and was an advisor to the Restatement (Third) of the Law Governing Lawyers.

Dennis Curtis is a Clinical Professor of Law and Professional Lecturer at Yale Law School. He has taught Professional Responsibility for 30 years and started the first law school clinic in which students worked with state grievance committees to prosecute lawyers accused of violations of Rules of Professional Responsibility.

Joshua P. Davis is the Associate Dean for Faculty Scholarship, Professor, and the Director of the Center for Law and Ethics at the University of San Francisco School Of Law. Professor Davis teaches and writes, *inter alia*, in the areas of complex litigation and legal ethics.

Meredith J. Duncan is George Butler Research Professor of Law at the University of Houston Law Center, where she teaches and writes in the areas of Professional Responsibility, Legal Ethics, Torts, and Criminal Law.

A. James Elliott, is the Associate Dean and teaches Legal Profession at Emory University School of Law. He was in private practice with Alston & Bird LLP

in Atlanta for 28 years prior to returning to the academy.

Marie A. Failinger is a Professor of Law at Hamline University School of Law. In the past, she has taught From Rules to Ethics at Hamline and she publishes articles on legal ethics.

Barbara Glesner Fines is the Associate Dean for Faculty and Ruby M. Hulen Professor of Law at the University of Missouri-Kansas City.

Susan Saab Fortney serves as the Interim Dean and Paul Whitfield Horn Professor at Texas Tech University School of Law. Since 1993, her research, service and teaching have focused on legal ethics issues.

Lawrence J. Fox is a partner at Drinker Biddle & Reath LLP. He is also currently the Visiting Lecturer of Law and the Crawford Lecturer at Yale Law School, teaching Ethics and Professional Responsibility, while also serving as the Supervising Lawyer at the newly established Ethics Bureau there. Mr. Fox was formerly a lecturer on law at both Harvard Law School (2007-2010) and The University of Pennsylvania Law School (2000-2008), and has authored many articles and books on Professional Responsibility. He is the former Chair of the American Bar Association Standing Committee on Ethics and Professional Responsibility and has served as an advisor to the Restatement (Third) of the Law Governing Lawyers.

Monroe H. Freedman is a Professor of Law at Hofstra University and the author of *Understanding Lawyers' Ethics* (3d Ed. 2004) (with Abbe Smith).

Marsha B. Freeman is a Professor of Law at Barry University School of Law and teaches in the areas of Professional Responsibility, Property, Administrative Law, and Family Law. She writes primarily on social and policy issues facing children and families and has served on the Florida Supreme Court Advisory Board for Children and Families and the Family Law Advisory Board for the 9th Judicial Circuit in Orange County, Florida.

David A. Green is a Professor of Law at North Carolina Central University School of Law where he teaches and writes in the areas of Professional Responsibility, Torts, Civil Procedure, Disability Law, and Employment Discrimination.

Leonard Gross is a Professor of Law Emeritus at Southern Illinois University School of Law and serves as Reporter to the Illinois Judicial Conference committee on Judicial Ethics and its committee on Sanctions in Civil Cases.

Melissa Hart is an Associate Professor and Director of the Byron R. White Center for the Study of American Constitutional Law at the University of Colorado School of Law.

Louise Hill is a Professor of Law at Widener University School of Law. She is the author of *Lawyer Advertising* and has taught Legal Ethics for 30 years.

Joseph Gordon Hylton is a Professor of Law at Marquette University and currently a Visiting Professor of Law at the University of Virginia. He teaches Professional Responsibility at both Marquette and the University of Virginia.

Donald Joseph practiced in the litigation department of a major Philadelphia law firm for 25 years before teaching law where he has continued for the past 15 years. Since 2000, he has taught at Rutgers Law- Camden. His area of focus is Professional Responsibility.

Peter Joy is on the faculty of Washington University where he teaches Legal Profession, Trial Practice & Procedure, and directs the Criminal Justice Clinic. He writes about access to justice, legal ethics, and criminal justice issues, and he is the co-author of *Do No Wrong: Ethics for Prosecutors and Defenders* (ABA 2009).

Ann Juergens is the Co-Director of Clinics and a tenured Professor of Law at William Mitchell College of Law in St. Paul. She has practiced law in a variety of settings – legal services, city attorney, private practice, law school clinics – since 1976 and began teaching Professional Responsibility in 1990.

Peter Keane is a Professor of Law and Dean Emeritus at Golden Gate University School of Law. He is the former President of the Bar Association of San Francisco and former Vice-President of the state Bar of California.

Sung Hui Kim is an Acting Professor of Law at U.C.L.A. School of Law. She writes and teaches in

the areas of Professional Responsibility, Business Associations, and Securities Regulation.

Charles Kindregan has taught courses in Professional Responsibility, Family Law and Assisted Reproductive Technology as a member of the resident faculty at Suffolk University School over a period of 45 years.

Renee Newman Knake is an Assistant Professor of Law, teaching Professional Responsibility at Michigan State University College of Law. "Professor Knake's most recent publication is *Prioritizing Professional Responsibility and The Legal Profession: A Preview of The U.S. Supreme Court's 2009-2010* Term, 5 Duke Journal of Constitutional Law and Public Policy 1 (2009)."

Michael I. Krauss is a Professor of Law at George Mason University School of Law in Arlington, Virginia, where he teaches Torts, Legal Ethics and Jurisprudence. His most recent publication is *Principles of Products Liability* (©Thomas-West, 2011).

Maury Landsman is an Emeritus Clinical Professor at the University of Minnesota Law School and was a Clinical Professor from 1986-2008. Professor Landsman taught Ethics and Professional Responsibility from 1998-2008.

Carol M. Langford is an Adjunct Professor of Law at the University of San Diego and the co-author of *Legal Ethics in the Practice of Law* (2007).

Lisa G. Lerman is a Professor of Law and Coordinator of Clinical Programs at The Catholic University of America. She is a co-author (with Philip G. Schrag) of *Ethical Problems in the Practice of Law* (2d Ed., Aspen 2008), co-author of *Learning from Practice* (2d Ed. West 2007), and an author of numerous articles in the field of legal ethics, including *Lying to Clients*, University of Pennsylvania Law Review, 1990.

Howard Lesnick is Jefferson B. Fordham Professor at the University of Pennsylvania Law School, teaching Legal Profession and Religion Law & Lawyering.

David Luban is a University Professor and Professor of Law and Philosophy at Georgetown University Law Center in Washington, DC. He is the author of *Lawyers and Justice: An Ethical Study* (1988), *Legal Ethics and Human Dignity* (2007) and the co-author of *Legal Ethics* (2008).

Myles V. Lynk was a Visiting Professor of Law at Duke University School of Law in 2010 and is the Peter Kiewit Foundation Professor of Law and the Legal Profession at Arizona State University in Tempe, Arizona. A member of the ALI, Myles teaches Legal Ethics and Professional Responsibility.

Peter Margulies is a Distinguished Research Professor of Law at Roger Williams University School of Law, teaching Professional Responsibility, Immigration Law and National Security Law.

Ellen Marrus is George Butler Research Professor of Law and Director of the Center for Children, Law & Policy at the University of Houston Law Center.

Susan D. Reece Martyn is Stoepler Professor of Law and Values at the University of Toledo. She is the author (with Lawrence J. Fox) of *Red Flags: A Lawyer's Handbook on Legal Ethics* (ALIABA 2d Ed. 2010), *The Ethics of Representing Organizations: Legal Fictions for Clients* (Oxford 2009), and *Traversing the Ethical Minefield: Problems, Law, and Professional Responsibility* (Aspen 2d Ed. 2008). She has served as a member of the American Bar Association Standing Committee on Ethics and Professional Responsibility, as an advisor to the Restatement (Third) of the Law Governing Lawyers, and as a member of the Ohio Supreme Court Task Force on the Rules of Professional Conduct.

Judith L. Maute is William J. Alley Professor of Law at the University of Oklahoma College of Law in Norman, Oklahoma, where for over 25 years she has studied lawyers' fiduciary duties to communicate and comply with clients' lawful instructions. *See*, *Allocation of Decisionmaking Authority Under the Model Rules of Professional Conduct*, 17 U.C. Davis L. Rev. 1049-1115 (1984).

James McGrath is Professor of Law at Texas Wesleyan, teaching Professional Responsibility and Torts.

Judith A. McMorrow is a Professor of Law at Boston College Law School. Professor McMorrow teaches and writes in the area of Professional

Responsibility, with a particular focus on the federal regulation of lawyers.

Carrie Menkel-Meadow is Chancellor's Professor of Law at the University of California, Irvine School of Law and A. B. Chettle Jr. Professor of Law at Georgetown University Law School. She is the author or numerous books and articles on alternative dispute resolution, including *What's Fair: Ethics for Negotiators (with M. Wheeler)* (2004) and *Mediation: Practice, Policy and Ethics,* (2006).

Thomas Metzloff is a Professor of Law at Duke University School of Law, where he teaches courses in Legal Ethics.

Kevin E. Mohr is a Professor at Western State University College of Law. He is the Former Chair of the State Bar of California Committee on Professional Responsibility and Conduct.

James E. Moliterno is the Vincent Bradford Professor of Law at Washington & Lee University. He has taught lawyer ethics for 29 years at six U.S. law schools and in seven other countries, and is author of several books on lawyer ethics issues, including *Cases and Materials on the Law Governing Lawyers* (2008).

Edward Ohlbaum is a Professor and the Director of CLE and the Trial Advocacy Program at Temple University School of Law. He teaches Professional Responsibility and Evidence, and has authored *Ohlbaum on the Pennsylvania Rules of Evidence* (2010) and co-*authored Pennsylvania Benchbook for Criminal Proceedings* (1999).

Arden J. Olson is a shareholder at Harrang Long Gary Rudnick PC in Eugene, Oregon. He is a former member of the ABA Standing Committee on Legal Ethics & Professional Responsibility, and a current member of the ABA Standing Committee on Professionalism.

William Wesley Patton is a Professor and J. Allan Cook and Mary Schalling Cook Children's Law Scholar at Wittier Law School. He is also a lecturer at U.C.L.A. David Geffen School of Medicine in the Department of Psychiatry.

Rex Perschbacher has been a University of California Davis faculty member since 1981 and holds the Daniel J. Dykstra Chair, teaching Professional Responsibility and Civil Procedure. He is co-author of *Problems in Legal Ethics*, now in its 9th edition, and *California Legal Ethics*, now in its 7th edition.

Lee A. Pizzimenti is the Associate Dean for Student Affairs and Professor of Law at the University of Toledo College of Law.

Brenda Jones Quick is a Professor Emeritus at Michigan State University College of Law. She has also been a Visiting Professor of Law at Barry University School of Law in Orlando and the University of Arizona College of Law in Tucson.

Nancy B. Rapoport is the Gordon Silver Professor of Law at the William S. Boyd School of Law at the University of Nevada, Las Vegas. Her specialties include bankruptcy ethics and ethics in corporate governance.

Cruz Reynoso is a Retired Associate Justice of the California State Supreme Court, Professor Emeritus at the University of California at Davis, and Past Vice Chair of the United States Commission on Civil Rights.

Patricia E. Roberts is a Clinical Assistant Professor of Law and Director of Clinical Programs at William & Mary Law School. She has taught Professional Responsibility and ethical lawyering as part of her skills teaching, following eight years in private practice.

Shannon M. Roesler is an Assistant Professor of Law at Oklahoma City, where she teaches Legal Profession, Criminal Law and Criminal Procedure.

Ronald D. Rotunda is the Doy & Dee Henley Chair and Distinguished Professor of Jurisprudence at Chapman University School of Law in Orange, California.

John P. Sahl is the Faculty Director of the Miller-Becker Center for Professional Responsibility at the University of Akron School of Law. He has taught Professional Responsibility for more than 25 years at Akron and other academic institutions and is a frequent lecturer, author, and consultant in the field.

Jack L. Sammons is Griffin B. Bell Professor at Mercer University School of Law. He has published *Lawyer Professionalism* (1988) and served as a member of the ABA Georgia Task Force on the Death Penalty.

Maria S. Savasta-Kennedy is a Clinical Professor and the Director of the Externship Program at the University of Northern California.

Professor Andrea Kupfer Schneider is the Director of the Dispute Resolution Program at Marquette University Law School. She is the co-author of *Mediation: Practice, Policy & Ethics* (2006).

Antoinette Sedillo Lopez is a Professor at the University of New Mexico School of Law, where she engages in clinical teaching and teaches Professional Responsibility and Family Law.

Jeffrey M. Shaman is the Vincent de Paul Professor of Law at DePaul University and the co-author of *Judicial Conduct and Ethics* (2007).

Jay S. Silver is a law professor at St. Thomas University School of Law in Miami, where he teaches Criminal Law and Legal Ethics. His articles have appeared in the Vanderbilt Law Review, the Wisconsin Law Review, the William and Mary Law Review, and the Ohio State Law Journal.

Gregory C. Sisk holds the Laghi Distinguished Chair in Law at the University of St. Thomas School of Law in Minnesota. He has taught Professional Responsibility for 17 years, co-authored a treatise on lawyer ethics with Chief Justice Mark Cady of the Iowa Supreme Court, and served as reporter for the drafting committee on the Iowa Rules of Professional Conduct.

Linda F. Smith is a Professor at the S. J. Quinney College of Law, University of Utah where she has

taught the Legal Profession course for over 20 years. She also serves on the Utah State Bar Ethics Advisory Opinion Committee.

John A. Straight is an Associate Professor of Law at Seattle University School Of Law, and co-author of *Washington Legal Ethics Desk Book*, WSBA (2003). He has taught Legal Ethics since 1976, and is a recipient on behalf of WSBA and SU of the ABA 1995 Gambrell Award for service to the profession for the creation and implementation and directing of the SU Legal Ethics Clinic.

Keith Swisher is an Assistant Professor of Law at Phoenix School of Law. He teaches Professional Responsibility and focuses his scholarship on legal and judicial ethics.

Laurel S. Terry is the Harvey A. Feldman Distinguished Faculty Scholar and Professor of Law at Penn State Dickinson School of Law in Carlisle, Pennsylvania. She specializes in legal ethics and the international and inter-jurisdictional regulation of the legal profession.

Lance Tibbles is a Professor of Law at Capital University Law School in Columbus, Ohio, where he teaches Professional Responsibility. He has been teaching this topic for 20 years.

Manning Gilbert Warren, III holds the Harold Edward Harter Chair at Louisville, teaching Legal Profession, Business Associations, and EU Law.

W. Bradley Wendel is a Professor of Law at Cornell Law School. He is the author of *Professional*

Responsibility: Examples and Explanations (Aspen 2007) and joins as an editor on the Fifth Edition of the casebook, Geoffrey C. Hazard, et al., *The Law and Ethics of Lawyering* (Foundation Press 2010).

Charles W. Wolfram is a Professor Emeritus at Cornell Law School, teaching Legal Ethics and Professional Responsibility. He was also the Chief Reporter for the *Restatement of the Law Governing Lawyers* (2000) of the American Law Institute and the author of many other books and articles on legal ethics, including the widely-cited treatise *Modern Legal Ethics* (1986).

Nancy A. Wonch is a Professor of Law at Thomas M. Cooley Law School, teaching Professional Responsibility and Civil Procedure.

Ellen Yaroshefsky is the Clinical Professor of Law and Director of the Jacob Burns Center for Ethics in the Practice of Law at the Benjamin N. Cardozo School of Law. She teaches a range of courses, sponsors programs and events that provoke critical thought on issues of legal ethics.

Richard Zitrin is an Adjunct Professor of Law at the University of California Hastings College of the Law. He is the founding Director of the Center for Applied Legal Ethics at the University of San Francisco School of Law and is the co-author of *Legal Ethics in the Practice of Law* (2007).

The Ethics Bureau at Yale is a student clinic that provides professional responsibility advice and counseling for not-for-profit agencies that offer legal services to the indigent.

The views expressed herein reflect the personal opinions of *Amici Curiae* and should not be attributed to the organizations or firms with which they are associated.