STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT

IN RE WILLIAM E. PAPLAUSKAS, JR. SU-2018-0161-MP

NON-PARTY RESPONSIVE LAW'S MOTION FOR LEAVE TO SUBMIT COMMENTS ON THE UNAUTHORIZED PRACTICE OF LAW IN A FORM OTHER THAN AN AMICUS BRIEF

Non-party Consumers for a Responsive Legal System (d/b/a "Responsive Law") respectfully moves the Honorable Court for leave to submit comments on the unauthorized practice of law in the form attached hereto as Exhibit 1, in lieu of submitting an argument that follows the formal requirements of an amicus brief.

In support of the motion, Responsive Law refers the Court to its Supporting Memorandum, filed herewith. For the Court's reference, Responsive Law is filing identical motions and memoranda in *In Re William E. Paplauskas, Jr.*, SU-2018-0161-MP, *In Re Daniel S. Balkun and Balkun Title & Closing, Inc.*, SU-2018-0162-MP, and *In Re Southcoast Title and Escrow, Inc.*, SU-2018-0163-MP.

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Dated: December 18, 2018

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Exhibit 1

Responsive Law
The Consumer's Voice in the Legal System

Testimony on: Rhode Island Unauthorized Practice of Law Committee Report on Non-Lawyer Real Estate Assistance

Tom Gordon
Executive Director,
Responsive Law

Testimony to the

Rhode Island Supreme Court

November 16, 2018

Responsive Law thanks the Rhode Island Supreme Court for the opportunity to present these comments. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers. We have testified to state bar associations and legislatures as well as to the American Bar Association on a range of issues affecting users of the legal system. **We would like to express our opposition to the Rhode Island Unauthorized Practice of Law Committee's recommendation that the Court pronounce that certain real estate transactions constitute the practice of law.** Real estate transactions that do not require legal knowledge and that can be standardized should not necessitate lawyer involvement that could drive up the cost of legal assistance for consumers.

The First Amendment Permits Public Comment on Court Rulemaking Without Hiring A Lawyer To File an Amicus Brief

We are aware of the Court's request that comments from interested parties be in the form of amicus briefs. With all due respect to the Court, we are submitting our comments in a simpler format, consistent with that which has been accepted by state supreme courts, bars, and legislatures when acting in a legislative capacity. The public has a First Amendment right to petition the government on a matter of public policy. They often do so through nonprofit corporations such as Responsive Law, where numerous individuals can band together to speak with a unified voice on a matter of common interest.

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When an organization comments on matters of public policy to a legislative body, it can submit written comments in its own name as a corporation, association, or other entity. It can testify orally through a representative of the organization, regardless of whether that representative is a member of that state's bar. This is true not only of legislatures, but of state supreme courts engaging in rulemaking. In fact, Responsive Law has written comments accepted by no fewer than seven state supreme courts in a format similar to the one you are now reading.

Requiring an organization such as Responsive Law to submit its comments in the form of an amicus brief imposes a substantial burden on its First Amendment rights as well as those of its supporters. As a corporation, Responsive Law cannot represent itself in Rhode Island courts.[1] Therefore, an amicus brief would require that Responsive Law hire an attorney who is a member of the Rhode Island Bar. If an attorney were somehow able to draft an entire amicus brief in twenty hours at the bargain price of $250/hour, it would still cost Responsive Law $5000 in addition to $150 in filing fees to exercise its First Amendment rights.[2]

The U.S. Supreme Court held in *Supreme Court of Virginia v. Consumers Union of U.S., Inc.* that state supreme courts issuing rules of the type being considered here are acting in their legislative capacity.[3] Any restrictions a court acting in this capacity places on those wishing to make their views known on a matter of public policy are governed by the First Amendment.

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[1] Article II, Rule 9(a) of the Rules of the Rhode Island Supreme Court.
[2] An amicus brief has the following among its requirements: table of contents; table of authorities; statement of facts and prior proceedings; numbered list of errors claimed and specific questions raised; appendix with page citations to the record; docket entries of proceedings below; relevant portions of findings or opinions. All of these documents must be submitted with multiple copies, with specific colors for the cover page, in a particular font size. These documents must be accompanied by appropriate motions and served on other parties (although it is unclear who the "parties" to a rulemaking process would be). The Court's rules governing briefs and service (Rules of Appellate Procedure 16-18) have over 2500 words detailing these requirements. Even if Responsive Law were able to proceed pro se, submitting an amicus brief conforming with these rules would take, at minimum, triple the staff time of preparing these comments in their present format.
[3] 446 US 719 (1980)

In this instance, it is clear that the Court is acting in a purely policymaking capacity. The Rhode Island Supreme Court Unauthorized Practice of Law Committee, in each of the opinions it issued, "recommend[ed] that no civil or criminal proceedings be initiated against the Respondent, but that the Court make a pronouncement that [various real estate closing services] constitute the practice of law" and can only be performed by Rhode Island attorneys.[4]

The requirements of formal amicus briefs advance no substantial state interest in policymaking matters, much less one that addresses a compelling state interest sufficient to permit burdening Responsive Law's First Amendment rights. The value of these rules in the resolution of a contested case is clear; they promote a level playing ground among litigants and ensure due process. However, those concerns dissipate when the Court's job is not to adjudicate a dispute, but rather to hear from all interested parties so that it can make an informed decision when creating public policy. In fact, rules that limit the extent to which the Court receives public input are directly at odds with this purpose.

Allowing Only Lawyers to Facilitate Real Estate Transactions Reduces Access to Justice by Preventing the Public from Hiring More Affordable Non-Lawyer Service Providers

The justice gap in the United States extends from the poorest Americans across the middle class. In the World Justice Project 2017-2018 report, the United States ranks 94th out of 113 countries (tied with Cameroon, Uganda, and Zambia) in the affordability and accessibility of its civil justice system.[5] Americans cannot afford to pay lawyers for assistance with everyday legal needs even though the average American household faces a significant legal problem

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[4] See *In re William E. Paplauskas*, No. 2018-161-M.P. (UPLC 2015-6); *In re SouthCoast Title and Escrow, Inc.*, No. 2018-163-M.P. (UPLC 2017-7); *In re Daniel S. Balkun and Balkun Title & Closing, Inc.*, No. 2018-162, M.P. (UPLC 2017-1).

[5] World Justice Project, *WJP Rule of Law Index 2017-2018* (2018), available at https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf.

every year.[6] More Americans do not address their legal problems due to lack of access to justice than their peers in countries such as England and the Netherlands, where there are fewer restrictions on how legal services can be offered.[7] Small businesses also struggle with the gap in access to justice, with over half facing legal problems without legal assistance.[8]

The typical three-person middle-class Rhode Island household requires almost two whole days of work to afford one hour of a lawyer's time, which means that larger households will face an even greater financial burden.[9] In the area of housing, Rhode Island Legal Services, which provides affordable legal aid, does not list among the services it provides any of the real estate transactions that the Committee specifically addresses.[10] In a state where the working class struggles even to afford to buy or rent, Rhode Islanders must rely on non-lawyer community resources for real estate advice.[11]

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[6] Gillian K. Hadfield & Jamie Heine, *Life in the Law—Thick World: The Legal Resource Landscape for Ordinary Americans in Beyond Elite Law: Access to Civil Justice for Americans of Average Means* (Samuel Estreicher & Joy Radice eds., 2015) (observing that fifty to sixty percent of low- and moderate-income American households face an average of two legal problems annually).

[7] Id.

[8] LegalShield, *Decision Analyst Survey: The Legal Needs of Small Business* (2013), available at https://www.le-galshield.com/news/legal-needs-american-families-0.

[9] Kathleen Elkins, *Here's How Much Money Middle-Class Families Earn in Every US State*, CNBC (March 13, 2018) (stating that according to Pew Research Center, the median household income of three-person middle-class families in Rhode Island in 2016 was $74,908. Assuming that the average Rhode Island income is based on an eight-hour workday five days a week, a middle-class Rhode Island household would need to save nearly two days' worth of income to afford one hour of a lawyer's time.). See also The United States Consumer Law Attorney Fee Survey Report 2015-2016, https://www.nclc.org/images/pdf/litigation/tools/atty-fee-survey-2015-2016.pdf (The average hourly rate for lawyers in Rhode Island in 2016 was $500.)

[10] *Housing*, Rhode Island Legal Services, http://rils.org/practice_areas.cfm?areaid=7## (listing focus areas in federally subsidized housing, private landlord/tenant issues, public housing, mobile homes, housing discrimination, mortgage foreclosures, and mortgage predatory lending).

[11] Christine Dunn, *Middle Class Squeeze: Priced Out of a Home in Rhode Island*, Providence Journal (June 21, 2014), http://www.providencejournal.com/breaking-news/content/20140621-middle-class-squeeze-priced-out-of-a-home-in-rhode-island.ece (explaining the inability of working class Rhode Islanders to afford to buy median-priced houses or rent apartments and noting the reliance on non-profit community agencies to review contracts and loan documents and provide continuous advice).

Trained Non-Lawyer Service Providers Who are Competent in Real Estate Matters Can Advise and Assist in Real Estate Transactions as Efficiently as Lawyers

The Committee does not clarify how common real estate transactions require legal knowledge or advice so as to constitute practice of law. It identifies five specific transactions that it believes should constitute the practice of law: title examination, real estate closing, deed drafting, residency affidavit, and power of attorney drafting. As explained in the Committee's report for *In re Daniel S. Balkun and Balkun Title & Closing, Inc.*, deeds can be drafted based on templates, prior transactions, information in purchase and sales agreements, or information communicated by the buyer's closing agent.[12] A standardized residency affidavit form is available on the website for the Rhode Island Division of Taxation.[13] Rhode Island Code § 18-16-2 provides language for the statutory short form power of attorney, and the Rhode Island Division of Taxation also provides a standardized power of attorney form.[14]

With respect to real estate closings, even if lawyers may provide better services in some instances, it should be the choice of the consumer as to whether the marginal increase in quality is worth paying a premium. The United States Department of Justice (DOJ) and the Federal Trade Commission (FTC) have urged states to allow consumers the choice of relying on lay closing services. In a letter to the Virginia State Bar and comments to the Virginia Supreme Court, the federal agencies opposed an unauthorized practice of law opinion prohibiting non-lawyers from conducting real estate closings.[15] According to the agencies, this opinion would have deprived consumers of their choice and stifled competition, thus increasing real estate closing costs. The agencies cited a New Jersey

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[12] Committee Report for *In re Daniel S. Balkun and Balkun Title & Closing, Inc.*, https://www.courts.ri.gov/PDF/UPLC-Balkun-CommitteeReport.PDF.
[13] State of Rhode Island Division of Taxation Department of Revenue, http://www.tax.ri.gov/taxforms/nrrewh.php.
[14] RI Code § 18-16-2. See also State of Rhode Island Division of Taxation Department of Revenue, http://www.tax.ri.gov/taxforms/.
[15] Letter to the Virginia State Bar from the Department of Justice and the Federal Trade Commission, Sept. 20, 1996, https://www.justice.gov/atr/proposed-upl-opinion-183-non-lawyers-conducting-real-estate-closings. See also Comments on Proposed UPL Opinion 183, https://www.justice.gov/atr/comments-proposed-upl-opinion-183-non-lawyers-conducting-real-estate-closings.

Supreme Court holding that allowed non-lawyers to conduct closings, finding that closing fees decreased accordingly. The Virginia State Bar later rescinded its opinion.[16]

The DOJ and FTC also noted that the DOJ obtained a judgment against an Indiana county bar association restraining title insurance companies from engaging in competition in certifying titles. Additionally, title insurance companies can subscribe to online resources that reproduce documents recorded daily by the local register.[17] Finally, the agencies noted that the DOJ prevailed with a court order against a New York county bar association that attempted to restrict corporate fiduciaries from providing trust and estate services to compete with attorneys.

Pronouncing that Real Estate Transactions Constitute the Practice of Law When Such Transactions Do Not Require Legal Knowledge Risks Antitrust Liability

Faced with the choice of allowing non-lawyers to compete with them, lawyers have continually chosen to insulate themselves from competition rather than allow non-lawyers to provide legal services. Allowing the UPL Committee—which is comprised of 13 lawyers and one non-lawyer—to exercise the bar's protectionist instincts is not only problematic from an access to justice perspective; it also runs afoul of antitrust laws. The Supreme Court's 2015 decision in *North Carolina Board of Dental Examiners v. Federal Trade Commission* makes clear that when a controlling number of the decision makers on a state licensing board are active participants in the occupation the board regulates, the board can invoke state-action immunity from antitrust laws only if it is subject to active supervision by the state.[18]

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[16] Virginia UPL Opinion 183, Virginia State Bar, http://www.vsb.org/site/regulation/virginia-upl-opinion-183.
[17] Nancy Leary Haggerty, *Where Are All the Automation Tools for Real Estate Lawyers? And Why We Should Welcome Them*, Probate &Property Magazine: Vol. 31 No. 02, American Bar Association, https://www.americanbar.org/publications/probate_property_magazine_2012/2017/march_april_2017/2017_aba_rpte_pp_v31_2_article_haggerty_automation_tools_for_real_estate_lawyers.html.
[18] *North Carolina State Bd. of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015).

This active supervision requirement requires that the Court undertake an independent analysis as to whether certain conduct constitutes the unauthorized practice of law. Such a review cannot grant any deference to the Committee's analysis, or it will run the risk of exposing the Committee members to antitrust liability. The Court's role in reviewing the Committee's decision is thus more legislative than judicial, requiring the Court to review the decision on policy grounds and foresee anticompetitive effects of such decisions.[19]

The dissent for *In re William E. Paplauskas, Jr.* states that "the law is not the exclusive domain of lawyers."[20] The DOJ and the FTC determined in 2007 that state proposals requiring lawyers to perform certain real estate services that had been performed by non-lawyers were unnecessary to protect consumers and could, instead, increase prohibitive costs for consumers.[21] Instead of considering the implications of these warnings against restraint of competition on the justice gap, the Committee dismisses them as having been issued "during the tenure of bygone federal administrations [with] no effect" on the issue of what real estate transactions constitute the practice of law.[22] The Court should, in turn, dismiss the shortsighted and self-interested view of the Committee and ignore its anti-competitive recommendations.

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[19] For a full discussion of the implications of *Dental Examiners* on anticompetitive regulatory action by the bars, see Responsive Law's Comments to the State Bar of California Governance in the Public Interest Task Force on Consumer Protection in the Wake of the *Dental Examiners* Decision, https://www.responsivelaw.org/uploads/1/0/8/6/108638213/responsive-law-comments-to-ca-governance-task-force__1_.pdf.

[20] *In re William E. Paplauskas, Jr*, UPLC 2015-6, https://www.courts.ri.gov/PDF/UPLC-Paplauskas-CommitteeReport.PDF.

[21] Opening Remarks by Federal Trade Commission Chairman Joseph J. Simons for Competition in Residential Real Estate Brokerage – An FTC-DOJ Workshop, June 5, 2018, https://www.ftc.gov/system/files/documents/public_statements/1383151/simons_-_real_estate_competition_workshop_opening_remarks_6-5-18.pdf.

[22] *In re William E. Paplauskas, Jr*, UPLC 2015-6, https://www.courts.ri.gov/PDF/UPLC-Paplauskas-CommitteeReport.PDF.

Rhode Island Should Not Restrict Non-Lawyer Service Providers Without Defining and Identifying the Consumer Harm That They Allegedly Cause to Parties in Real Estate Transactions

In the United States, there are several examples of non-lawyer LSPs that have helped consumers resolve their legal issues. Online services like Legal Zoom have had as many as one million users over the course of a decade without reliable evidence of incompetence.[23] Call for Action uses a national network of more than 1200 non-lawyer volunteers to help people resolve consumer complaints, operating since 1963 with no record of consumer harm.[24] Harvard's Small Claims Advisory Service uses undergraduate students without lawyer supervision to help guide people through Massachusetts small claims courts, without any record of consumer harm since it began operating in 1973.[25]

Similarly, in England and Wales, there has been a robust market of non-lawyer LSPs for decades, in both litigation and legal advice. McKenzie Friends provide moral support, take notes, assist in the management of court papers and provide advice on courtroom conduct, and may charge a fee for their services. They have operated for nearly fifty years, with a recent report finding that there was "no evidence of [consumer detriment] occurring on any scale."[26] More broadly, the United Kingdom's Citizens Advice has used non-lawyer volunteers to provide advice on legal and other matters to tens of millions of people for over seventy-five years,[27] and has a 97% consumer satisfaction rating.[28] In contrast to these records of consumer satisfaction, lawyers have a consumer satisfaction rating

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[23] Andrew Perlman, "Towards the Law of Legal Services," 37 *Cardozo L. Rev.* 49, 107 (2015) (stating that "more than one million consumers have used LegalZoom in the last ten years alone, and there is no reliable evidence of incompetence").
[24] http://callforaction.org/volunteer-info/ (retrieved April 28, 2016).
[25] http://masmallclaims.org/about.html (retrieved April 28, 2016).
[26] Legal Services Consumer Panel, "Fee Charging McKenzie Friends," p. 5 (April 2014), http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2014%2004%2017%20MKF_Final.pdf (retrieved April 28, 2016).
[27] Citizens Advice, "Our annual report and accounts 2014/15," p. 5, https://www.citizensadvice.org.uk/Global/Public/About%20us/ Annual%20 report/Citizens-Advice-annual-report-2014-15.pdf (retrieved April 28, 2016).
[28] "Client satisfaction with the Citizens Advice service," (2014), https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/client-satisfaction-2.pdf (retrieved April 28, 2016).

of 76%,[29] with one lawyer discipline complaint filed annually for every fourteen lawyers.[30] Even when compared to the already highly regulated services of lawyers, leading non-lawyer LSPs do not appear to have a consumer protection problem.

It is also wroth noting that regulation—or prohibition—of services by the bar is not the only way to protect consumers. Non-lawyers who provide real estate services—including title insurance companies, banks, notaries public, and real estate brokers—are already regulated, providing consumers with protection in addition to generally applicable consumer protection laws.[31]

Furthermore, there has been no demonstration by the Committee of actual harm to consumers from non-lawyer services. Causes of action for unauthorized practice of law should require a complaint from a customer and a finding of actual harm to that customer. This finding of actual harm cannot be based merely on the fact that someone paid a non-lawyer to provide services; it must be based on harm caused by the services themselves.

Without such a requirement, rules for unauthorized practice of law can be used to protect lawyers from competition, rather than to protect consumers from incompetence. Many non-lawyer innovators delivering legal services—both online and bricks-and-mortar—cite prosecutions for unauthorized practice of law as one of the main obstacles to their businesses. Until a requirement-of-harm provision is added to UPL rules, providers of innovative, affordable law-related

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[29] ABA Section of Litigation, "Public Perception of Lawyers: Consumer Research Findings," p. 19 (April 2002), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/public_perception_of_lawyers_2002.authcheckdam.pdf (retrieved April 28, 2016).
[30] ABA Center for Professional Responsibility, "Survey on Lawyer Discipline Systems," p. 2 (January 2016), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/chart_%20IA_2014_%20sold_results.authcheckdam.pdf (retrieved April 28, 2016).
[31] See *Licensed and Approved Insurance Companies*, State of Rhode Island Department of Business Regulation, http://www.dbr.state.ri.us/divisions/insurance/licensed.php; *Real Estate*, State of Rhode Island Department of Business Regulation, http://www.dbr.state.ri.us/divisions/commlicensing/realestate.php; *Rules & Regulation: Banking Division*, State of Rhode Island Department of Business Regulation, http://www.dbr.ri.gov/rules/banking/; *Notary Public Manual*, Rhode Island Secretary of State, http://sos.ri.gov/assets/downloads/documents/Notary-Public-Manual.pdf.

services will be unable to provide affordable services to customers without fear of running afoul of UPL prohibitions.

Conclusion

The Committee's recommendation to pronounce real estate transactions as practice of law does not serve the public interest. Without identifying the consumer harm caused by non-lawyers assisting real estate transactions—especially when the Committee has not explained the specific need for lawyers to be exclusively permitted to advise such transactions—any pronouncement limiting more affordable services for the public would only preserve the justice gap.

The privilege of lawyer self-regulation is already on thin ice after the *Dental Examiners* decision. For lawyers to extend that privilege to include regulation of non-lawyers without sufficient showing of consumer harm would not only be inappropriate, it would be a signal to antitrust authorities that the legal profession is not capable of handling that privilege. Rather than trying to extend its regulatory reach, the profession should demonstrate that it is capable of exercising discretion by acknowledging the limits of its regulatory authority.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT

IN RE WILLIAM E. PAPLAUSKAS, JR. SU-2018-0161-MP

NON-PARTY RESPONSIVE LAW'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO SUBMIT COMMENTS ON THE UNAUTHORIZED PRACTICE OF LAW IN A FORM OTHER THAN AN AMICUS BRIEF

Non-party Consumers for a Responsive Legal System (d/b/a "Responsive Law") respectfully requests that the Honorable Court grant its motion for leave to submit comments on the unauthorized practice of law in the form attached to its motion as Exhibit 1, in lieu of submitting an argument that follows the formal requirements of an Amicus Brief. In matters of extreme public importance like the three miscellaneous proceedings pending before this Court on the unauthorized practice of law, the Court's decisions are akin to rulemakings that will impact large segments of the general public. By permitting Responsive Law to submit comments in a simplified format, the Honorable Court will ensure that all interested parties can submit their viewpoints, including those who cannot afford to hire an attorney admitted in Rhode Island.

I. FACTS AND TRAVEL

Responsive Law, based in Washington, D.C., is a non-profit 501(c)(3) corporation with a national focus on making the legal system more affordable, accessible, and accountable. Responsive Law advocates for lowering and removing barriers to the legal system. Its mission includes facilitating legal self-help resources, championing innovative lawyers and courts, and promoting competition to traditional legal services, which it fulfills in part by providing testimony and commentary. Responsive Law regularly submits testimony to courts on topics such as public oversight of lawyer regulation, the unauthorized practice of law, lawyer advertising, and limited scope representation. It operates on a lean budget, with one full-time

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staff member and total revenues ranging between $99,899 and $146,020 for tax years 2015 to 2017.

Consistent with its mission, on August 16, 2018, Responsive Law's Executive Director Tom Gordon submitted comments to the Rhode Island Supreme Court regarding the Rhode Island Unauthorized Practice of Law Committee's reports in the miscellaneous proceedings pending in *In Re William E. Paplauskas, Jr.*, SU-2018-0161-MP, *In Re Daniel S. Balkun and Balkun Title & Closing, Inc.*, SU-2018-0162-MP, and *In Re Southcoast Title and Escrow, Inc.*, SU-2018-0163-MP. On August 23, 2018, the Clerk issued a Notice that rejected Responsive Law's comments. The Notice informed Responsive Law that its submission did not conform to the Supreme Court's rules by omitting a case caption, using the wrong font, not including a signature from counsel, and not certifying service to counsel of record. The Notice also informed Responsive Law that if it wished to file comments in a format other than an Amicus Brief, it should file a formal motion requesting permission.

Responsive Law has now retained *pro bono* counsel and seeks leave to file its comments in lieu of a formal Amicus Brief.

II. ARGUMENT

Responsive Law's core mission as an advocate for alternative legal services, along with its inability to afford counsel in Rhode Island, constitutes good cause for granting leave to submit comments in the simplified format attached as Exhibit 1. Responsive Law acknowledges that its path of least resistance before this Court is a motion for leave to file an Amicus Brief. However, its request to submit comments in a format simpler than an Amicus Brief is directly correlated to its mission to encourage greater affordability and accessibility to the legal system. Responsive Law has a limited budget with one full-time staff member, and, like many other users of the legal

system, it could not have afforded to pay an outside attorney at a market rate to draft and file an Amicus Brief in the three miscellaneous proceedings pending before this Court. Responsive Law's submission of comments in lieu of an Amicus Brief is a direct corollary of its mission of greater access to the legal system for non-lawyers.

It is also significant that Responsive Law's submission of comments to the Supreme Court does not break new ground – to the contrary, it has regularly submitted commentary in similar formats without incident to other courts of last resort, including the following tribunals:

- Virginia Supreme Court regarding proposed revisions to the unauthorized practice of law (July 13, 2018);
- California Supreme Court on the topic of special regulatory assessment (October 11, 2016);
- D.C. Court of Appeals Committee on Unauthorized Practice of Law for recommended improvements to the District of Columbia Rules on the unauthorized practice of law (February 29, 2016);
- Washington Supreme Court on suggested limited license legal technician rules of professional conduct (December 1, 2014);
- Supreme Court of Arizona regarding the Arizona Rules of Professional Conduct (May 20, 2013);
- Supreme Court of Tennessee in response to a petition to adopt changes to the rules of professional conduct on lawyer advertising (March 11, 2013);
- New Jersey Supreme Court regarding bricks and mortar offices in the modern digital age (March 30, 2012);

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- Massachusetts Supreme Judicial Court on proposed amendments to Rules 1.5 and 6.6 of the Massachusetts Rules of Professional Conduct (March 8, 2012); and
- Wisconsin Supreme Court for limited scope representation (May 31, 2011).

The Rhode Island Supreme Court's acceptance of Responsive Law's comments would be consistent with the practice of these other courts of last resort throughout the United States.

The acceptance of comments in a format simpler than an Amicus Brief is also harmonious with the First Amendment right to petition the government on matters of public policy, particularly when a court of last resort sits in a rulemaking posture. The Unauthorized Practice of Law Committee has recommended that the Honorable Court make pronouncements that include:

- "conducting a real estate closing constitutes the practice of law and must be handled exclusively by an attorney in this state;"
- "the following acts constitute the practice of law and can only be performed by a lawyer: (a) conducting a title examination to determine the marketability of title, (b) conducting a real estate closing, (c) drafting a deed on behalf of a party to a real estate transaction, (d) drafting a residency affidavit on behalf of a party to a real estate transaction, and (e) drafting a power of attorney on behalf of a party to a real estate transaction;" and
- "following acts constitute the practice of law and can only be performed by a lawyer . . . conducting a title examination to determine the marketability of title."

These recommended pronouncements from the Unauthorized Practice of Law Committee do not ask the Honorable Court to impose sanctions on the litigants, but rather ask the Court to set guidelines for future conduct that will go far beyond the parties in the three miscellaneous

proceedings. From this perspective, the Court's rulings are more akin to policy-making on the legal requirements for real estate closings than narrow decisions that affect the rights of parties in contested cases.

In other similar contexts, this Court has remarked that tribunals that issue broad policy rules act in a legislative capacity. *Maynard v. Beck*, 741 A.2d 866, 870 (R.I. 1999) (citing *Supreme Court of Virginia v. Consumers Union of the United States, Inc.*, 446 U.S. 719 (1980); *see also Reid v. Pautler*, 36 F. Supp. 3d 1067, 1124 (D.N.M. 2014) (quoting *Consumers Union of United States, Inc.*, 446 U.S. at 734 (1980) ("Because disciplinary rules are rules of general application and are statutory in character, because they act not on parties litigant but on all those who practice law in [a state], and because they do not arise out of a controversy which must be adjudicated, but instead out of a need to regulate conduct for the protection of all citizens, a court acts in a legislative capacity when it enacts disciplinary rules.") (internal quotations omitted)); *see also Larsen v. Senate of the Commonwealth*, 152 F.3d 240, 253 (3d Cir. 1998) (same); *Cascadia Wildlands v. Kitzhaber*, 911 F. Supp. 2d 1075, 1083 (D. Or. 2012) (same). Because the Court's rulings will be akin to rulemaking for the unauthorized practice of law, the public should have the opportunity to submit comments on general policy-making matters without incurring the expense of hiring an attorney to draft and file an Amicus Brief. *See First Nat'l Bank v. Bellotti*, 435 U.S. 765, 791 n.31 (1978); *see also Citizens United v. FEC*, 558 U.S. 310, 355 (2010).

The acceptance of Responsive Law's comments in a simplified format will enable the Supreme Court to hear from all interested parties, including those who cannot afford to hire an attorney admitted in Rhode Island. This will assist the Court in taking into account all viewpoints on the unauthorized practice of law.

III. CONCLUSION

For the foregoing reasons, the Honorable Court should grant Responsive Law's motion for leave to submit comments on the unauthorized practice of law in form attached to its Motion as Exhibit 1.

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By its attorney,

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CERTIFICATE OF SERVICE

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