

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

COLEGIO DE ABOGADOS Y ABOGADAS DE PUERTO RICO; EDGARDO M. ROMÁN ESPADA; ALEJANDRO TORRES RIVERA; MILTON DAVID ROQUE GARCÍA; GUSTAVO A. QUIÑONES PINTO; LOHARINA VELÁZQUEZ CASTRO; DAISY CALCAÑO LÓPEZ; BETSY E. GONZÁLEZ RÍOS; LUIS ANTONIO FERRER RIVERA; YAMILETTE VARGAS HERNÁNDEZ; EVELYN JANNET GARCÍA LÓPEZ; ISMAEL RAMOS COLÓN; ELADIO MALAVÉ NUÑEZ; WALESKA DELGADO SÁNCHEZ; NORA CRUZ MOLINA; AND RITA I. MALDONADO ARRIGOITÍA

Plaintiffs

vs.

HON. SIGFRIDO STEIDEL FIGUEROA, in his official capacity as the Puerto Rico Court Administrator; HON. ABID E. QUIÑONES PORTALATÍN, in his official capacity as the Interim Regional Administrative Judge of the Puerto Rico Court of First Instance for the Aguadilla Region; HON. YASMÍN CHAVES DÁVILA, in her official capacity as the Regional Administrative Judge of the Puerto Rico Court of First Instance for the Aibonito Region; HON. HEIDI D. KIESS RIVERA, in her official capacity as the Regional Administrative Judge of the Puerto Rico Court of First Instance for the Arecibo Region; HON. CARMEN L. OTERO FERREIRAS, in her official capacity as the Regional Administrative Judge of the Puerto Rico Court of First Instance for the Bayamón Region; HON. RICARDO G.

CIVIL NO. 19-2135

RE: Violation of Civil Rights; Action for Declaratory Judgment, Injunctive Relief and Attorney's Fees

MARRERO GUERRERO, in his official capacity as the Regional Administrative Judge of the Puerto Rico Court of First Instance for the Caguas Region; HON. ROSA DEL C. BENÍTEZ ÁLVAREZ, in her official capacity as the Regional Administrative Judge of the Puerto Rico Court of First Instance for the Carolina Region; HON. CAMILLE RIVERA PÉREZ, in her official capacity as the Regional Administrative Judge of the Puerto Rico Court of First Instance for the Fajardo Region; HON. JOSÉ M. D'ANGLADA RAFFUCCI, in his official capacity as the Regional Administrative Judge of the Puerto Rico Court of First Instance for the Guayama Region; HON. MAYRA HUERGO CARDOSO, in her official capacity as the Regional Administrative Judge of the Puerto Rico Court of First Instance for the Humacao Region; HON. MAURA SANTIAGO DUCÓS, in her official capacity as the Interim Regional Administrative Judge of the Puerto Rico Court of First Instance for the Mayagüez Region; HON. LISSETTE TORO VÉLEZ, in her official capacity as the Regional Administrative Judge of the Puerto Rico Court of First Instance for the Ponce Region; HON. LAURA L. LÓPEZ ROCHE, in her official capacity as the Regional Administrative Judge of the Puerto Rico Court of First Instance for the San Juan Region; HON. JOSÉ M. ORTA VALDEZ, in his official capacity as the Regional Administrative Judge of the Puerto Rico Court of First Instance for the Utuado Region; and SONNYA ISABEL RAMOS ZENO, in her official capacity as the Clerk of the Puerto Rico Supreme Court.

Defendants

“[C]ourts may not exercise their inherent powers in a way that actually conflicts with constitutional ... provisions.”

Kovilic Const. Co. v. Missbrenner,
106 F.3d 768, 772 (7th Cir. 1997).

COMPLAINT

TO THE HONORABLE COURT:

COME NOW the above-named Plaintiffs, by and through their undersigned attorney, and, before this Honorable Court, respectfully state, allege and pray as follows:

I. Nature of the Action, Jurisdiction, and Venue

1. This action seeks to prevent the egregious violations of Plaintiffs' civil rights protected by the Constitution of the United States of America and by the Constitution and Laws of the Commonwealth of Puerto Rico, particularly the right not to be deprived of a liberty and proprietary interests without due process, the right to equal protection under the law, and the right not to be deprived of their property without just compensation, that will result from the implementation of the 2018 Puerto Rico Regulation for the Assignment of Court Appointed Attorneys (“Reglamento para la Asignación de Abogados y Abogadas de Oficio de Puerto Rico”), as amended, which is set to come into effect on January 1st, 2020.

2. Pursuant to 28 USC §§ 1331 and 1343, this Court has subject matter jurisdiction over the parties and the claims for and declaratory and injunctive relief and attorney's asserted herein since they arise under the Civil Rights Act of 1871, as amended, 42 USC §§ 1983 and 1988.

3. The Court has supplemental jurisdiction over all the pendent claims arising under the Laws and Constitution of the Commonwealth of Puerto Rico pursuant to 28 USC § 1367 since the federal and the Puerto Rico claims asserted in this Complaint are intertwined and interrelated, form part of the same case and controversy and derive from a common nucleus of operative facts.

4. Venue is proper in this Court under 28 USC § 1391(b) since the Plaintiffs' claims arose within the judicial district of Puerto Rico.

5. At all material times to this action, Defendants have acted under color of state law and in their official capacity as the Puerto Rico Court Administrator, the Regional Administrative Judges of the Puerto Rico Court of First Instance and the Interim Clerk of the Puerto Rico Supreme Court, respectively.

II. The Parties

6. Plaintiff Colegio de Abogados y Abogadas de Puerto Rico (hereinafter "Colegio"), who traces its origins to 1840, is the oldest and largest voluntary professional organization within the Commonwealth of Puerto Rico. In its current existence, Colegio was created by Puerto Rico Law 43-1932, as amended, with perpetual subsistence and capacity to sue and be sued as a body corporate. 4 L.P.R.A. § 773(a).

7. Plaintiffs Edgardo M. Román Espada, Alejandro Torres Rivera, Milton David Roque García, Gustavo A. Quiñones Pinto, Loharina Velázquez Castro, Daisy Calcaño López, Betsy E. González Ríos, Luis Antonio Ferrer Rivera, Yamilette Vargas Hernández, Evelyn Jannet García López, Ismael Ramos Colón, Eladio Malavé Nuñez, Waleska Delgado Sánchez, Nora Cruz Molina, and Rita I. Maldonado Arrigoitia

(hereinafter collectively referred to as “Individual Plaintiffs”) are all duly licensed attorneys to practice the legal profession within the Commonwealth of Puerto Rico, members of Colegio, younger than seventy (70) years of age and subject to the 2018 Puerto Rico Regulation for the Assignment of Court Appointed Attorneys (“Reglamento para la Asignación de Abogados y Abogadas de Oficio de Puerto Rico”), as amended, which is set to become effective on January 1st, 2020.

8. Defendant, the Honorable Sigfrido Steidel Figueroa, is and has been, at all material times to this action, the Puerto Rico Court Administrator. As such, he is required to administer and put into effect the 2018 Puerto Rico Regulation for the Assignment of Court Appointed Attorneys (hereinafter “Regulation”). He is being sued exclusively in his official capacity.

9. Defendants Hon. Abid E. Quiñones Portalatín, Hon. Yasmín Chaves Dávila, Hon. Heidi D. Kiess Rivera, Hon. Carmen L. Otero Ferreiras, Hon. Ricardo G. Marrero, Guerrero, Hon. Rosa del C. Benítez Álvarez, Hon. Camille Rivera Pérez, Hon. José M. D’Anglada Raffucci, Hon. Mayra Huergo Cardoso, Hon. Maura Santiago Ducós, Hon. Lissette Toro Vélez, Hon. Laura L. López Roche and Hon. José M. Orta Valdez are the Regional Administrative Judges for each of the thirteen (13) Judicial Regions of the Puerto Rico Court of First Instance. As such, they are required to administer and put into effect the Regulation in each of the Judicial Regions under their supervision. They are all being sued exclusively in their official capacity.

10. Defendant Sonnya Isabel Ramos Zeno is the Interim Clerk of the Puerto Rico Supreme Court. As such, she is required by the Regulation to inform to the Puerto

Rico Supreme Court all the attorneys younger than seventy (70) years of age that do not fill the form that the Individual Plaintiffs are required to submit electronically with the information that will be used to create the order in which they will be called to provide *pro bono* services in criminal and civil cases within the judicial zones in which they are placed as more particularly described herein bellow. She is being sued exclusively in her official capacity.

III. Factual Background

A. Colegio's purposes and stance regrading *pro bono* services:

11. Two (2) of the stated and main purposes of Colegio are “[t]o protect its members in the exercise of their profession”, 4 L.P.R.A. § 773(f), and to implement “programs of service to the community and the profession.” 4 L.P.R.A. § 773(i).

12. In compliance with the foregoing, Colegio is and has always been since its inception almost one hundred and eighty (180) years ago at the forefront of the provision of voluntary, free legal services to the needy. Consistent with that tradition, Colegio was the promoter, founder and/or supporter of Legal Services of Puerto Rico, Inc., the Legal Aid Society, the Oficina Legal de la Comunidad, Inc., and Pro Bono, Inc., all of whom provide free legal services to the most economically disadvantaged sectors of the Puerto Rico populace.

13. During the past twenty (20) years, the Governing Body (“Junta de Gobierno”) and the General Assembly of Colegio have approved several Resolutions calling for a just, equitable and constitutional regulation for the provision of voluntary, free legal services to the needy, particularly in criminal cases.

14. Despite Colegio's repeated and substantiated requests, the Puerto Rico Supreme Court enacted the Regulation, which, for the reasons set forth herein below, does not pass constitutional muster.

15. Accordingly, in the most recent Annual Convention held on September 14, 2019, Colegio's General Assembly overwhelmingly approved Resolution No. 6, which, among other matters, reiterated Colegio's vast and long-standing tradition in support of access to courts programs for the economically disadvantaged, its promotion of a voluntary and compensated system to represent the needy and its opposition to the imposition of involuntary servitude programs.

16. Resolution No. 6 further authorized and commanded Colegio to file the instant action to contest the validity of the Regulation.

B. The current demographics and economics of the Puerto Rico legal profession:

17. In a recently published study commissioned by Microjuris, Inc. and performed by Estudios Técnicos, Inc., a well-known and reputable firm dedicated to planning and economic analysis, (hereinafter "the ETI Study") as of September 2019, there were a total of 13,944 attorneys licensed to practice the legal profession within the Commonwealth of Puerto Rico, eight percent (8%) of which, or 1,116, resided outside of the jurisdiction. According to the ETI Study, as of September 2019, there were 12,828 licensed attorneys living within the Commonwealth of Puerto Rico, of which 10,902 were actually practicing the legal profession.

18. The ETI Study further attested that four-point-seven percent (4.7%) of the practicing attorneys within Puerto Rico, or 512, were in the public service.

19. According to the ETI Study, the average annual income of the Puerto Rico practicing attorneys, whose average age was forty-nine (49) years old, was \$74,690.00.

20. Furthermore, the ETI Study asserts that eighty percent (80%) of the Puerto Rico licensed attorneys have provided *pro bono* services in their career and sixty-one percent (61%) of them had done so during 2018.

21. The ETI Study estimated that the economic value of the *pro bono* services that were provided by Puerto Rico licensed attorneys during 2018 amounted to Three Million Five Hundred Thousand Dollars (\$3,500,000.00).

C. The unconstitutional Regulation:

22. The Puerto Rico Supreme Court has traditionally and repeatedly held that it has the inherent authority to regulate the legal profession within the Commonwealth of Puerto Rico.

23. Pursuant to that self-proclaimed authority, on October 18, 2018, the Puerto Rico Supreme Court issued a Resolution in Miscellaneous Proceeding No. ER-2018-04, whereby it enacted the Regulation. The Regulation was originally set to become effective on July 1, 2019, but the Puerto Rico Supreme Court subsequently amended the Regulation to change its effective date to January 1st, 2020.

24. Rule 1 of the Regulation established that it was promulgated “by virtue of the inherent power of the Puerto Rico Supreme Court to regulate the legal profession in Puerto Rico.” (Our translation.)

25. The Regulation provides that it applies to all attorneys licensed by the Puerto Rico Supreme Court to practice the legal profession within the Commonwealth of

Puerto Rico, unless otherwise excused or exempted, and imposes upon them the obligation to provide thirty (30) hours of free legal services on an annual basis to indigent citizens both in criminal and civil matters.

26. The Regulation further provides that attorneys that are appointed to provide free legal services must also advance the necessary expenses to provide the court appointed services, which may be reimbursed on a monthly basis.

27. The Regulation also provides that court appointed attorneys have the right to be compensated after the first 30 hours of service in a year at the rate of \$30.00 per hour for out of court work and at the rate of \$60.00 per hour for in court or appellate work.

28. It is alleged upon information and belief that, prior to the enactment of the Regulation, the Puerto Rico Supreme Court did not commission an economic study to measure and/or substantiate the adequacy and reasonableness of the rates established in the Regulation.

29. Those rates are so low that they are not enough to cover the overhead expenses of the Individual Attorneys. Thus, they are unreasonable *per se*.

30. Notwithstanding the foregoing, neither the Puerto Rico Supreme Court nor the Commonwealth of Puerto Rico has secured nor has made available the necessary funds to reimburse expenses incurred by court appointed counsel nor to compensate them after the first thirty (30) hours of service in any fiscal year.

31. Rule 3 of the Regulation states that all attorneys licensed to practice within the Commonwealth of Puerto Rico have the ethical duty to ensure that all persons may receive adequate legal representation and to provide *pro bono* services to indigent

persons. Yet, the Regulation exempts or excludes broad categories of attorneys from having to provide free legal services to the most economically disadvantaged citizens of Puerto Rico. Attorneys that do not reside nor practice within the Commonwealth of Puerto Rico, those in public service and those that provide *ad honorem* services for the judicial branch are two (2) of the classes of attorneys that are exempted from having to work for free pursuant to the Regulation.

32. Rule 5 of the Regulation provides that qualified persons will be entitled to receive *pro bono* legal services in all the stages of criminal and juvenile proceeding and in civil proceedings in which “the right of assistance of counsel has been recognized” as well as those in which “the fundamental needs of the human being are implicated”. (Our translation.)

33. Rule 4(v) defines “fundamental needs of the human being” as civil proceedings that imply matters pertaining to “housing, sustenance, health, safety, and parental rights ... over minor aged children such as *patria potestas*, custody, filiation, and visitation rights in compliance with the parameters issued through directives of the Office of Court Administration.” To date, neither Defendant Steidel Figueroa nor the Office of Court Administration have published any such directives.

34. Rule 8 of the Regulation provides that the universe of attorneys that are not exempted or excluded from the obligation to provide free legal services to the needy will be divided in various judicial zones. Attorneys may then be appointed to provide *pro bono* services in any judicial proceeding within the judicial zone that corresponds to the location of their offices.

35. Rule 25(a)(4) of the Regulation commanded Defendant Steidel Figueroa to draw the map of the judicial zones, which he published in February of 2019. Pursuant to the boundaries set forth in the map in question, copy of which is attached hereto as Exhibit 1, attorneys may be forced to travel long distances in order to provide free legal services within the judicial zones demarcated in the map.

36. Pursuant to Rule 15(b) of the Regulation, attorneys may seek reimbursement for travel expenses at the rate of thirty cents (30¢) for each travelled mile outside of the municipality in which they reside, or their offices are located.

37. Rule 25(b) of the Regulation provides that all attorneys licensed to practice the legal profession in Puerto Rico and that are younger than seventy (70) years of age, including all the Individual Plaintiffs, must file electronically a form containing certain information that will be used to create the order in which they will be called to provide *pro bono* services in criminal and civil cases within the judicial zones in which they are placed. Said Rule further provides that Defendant Sonnya Isabel Ramos Zeno must inform the Puerto Rico Supreme Court the names of all attorneys that do not submit the required form and that failure to do so may subject attorneys to disciplinary proceedings.

38. As of the date of filing of the instant action, none of the Individual Plaintiffs, except for Milton David Roque García, has submitted the form required by Rule 25(b).

39. Rule 8(h) of the Regulation provides that an arisen indigency (“insolvenca sobrevénida”) of a client will not allow the attorney to withdraw from the client’s legal representation and that judges must force attorneys to continue with their legal representation on a *pro bono* basis.

40. Yet, the Regulation does not define the concept of “arisen indigency” nor how the “arisen indigency” will be ascertained or determined.

IV. First Claim for Relief
(Deprivation of liberty without due process)

41. Plaintiffs repeat and incorporate all the allegations contained in paragraphs 1 through 40 as if fully set forth herein.

42. The Fifth and the Fourteenth Amendments unequivocally provide that no person shall “be deprived of life, liberty, or property, without due process of law.”

43. The Individual Plaintiffs’ right to practice the legal profession is inalienable and fundamental. It forms part and parcel of the liberty right that is protected by the Due Process Clauses of the Fifth and the Fourteenth Amendments, both procedurally and substantively.

44. Courts analyze government invasions of fundamental liberty interests under strict scrutiny. Thus, the deprivation of a fundamental liberty interest, as the one at issue herein, will comport with due process only if it is narrowly tailored to serve a compelling government interest.

45. The Regulation deprives the Individual Plaintiffs of their fundamental right to practice their chosen profession by forcing them to work for free in civil matters.

46. There cannot be any compelling government interest in forcing attorneys to provide *pro bono* services in civil cases inasmuch as, under the US Constitution, there is no right to free legal representation in civil matters.

V. Second Claim for Relief
(Deprivation of property without due process)

47. Plaintiffs repeat and incorporate all the allegations contained in paragraphs 1 through 40 as if fully set forth herein.

48. Attorneys, in general, and the Individual Plaintiffs, in particular, have a proprietary interest in their legal practice that is protected by the Due Process Clause.

49. The Regulation runs afoul with the Due Process Clause since it deprives the Individual Plaintiffs of their property rights by forcing them to invest their time and resources on a *pro bono* basis.

VI. Third Claim for Relief
(Vagueness)

50. Plaintiffs repeat and incorporate all the allegations contained in paragraphs 1 through 40 as if fully set forth herein.

51. Under the Due Process Clause, a regulation may be void for vagueness if it fails to have the necessary standards to delimit the exercise of the governmental discretion or if it propitaites or invites an arbitrary enforcement.

52. The Regulation is null and void due to vagueness since it does not adequately define the civil proceedings that qualify for the provision of free legal services nor does it define the concept of “arisen indigency”, thus allowing an arbitrary application on a case-by-case basis.

VII. Fourth Claim for Relief
(Equal protection)

53. Plaintiffs repeat and incorporate all the allegations contained in paragraphs 1 through 40 as if fully set forth herein.

54. Pursuant to the Fourteenth Amendment, States cannot “deny to any person within [their] jurisdiction the equal protection of [their] laws.” U.S. Const., amend. XIV.

55. The Due Process Clause was designed to prevent the passage of discriminatory state laws and regulations that deny equal rights to people in similar circumstances, but of different classes.

56. Attorneys in private practice, including the Individual Plaintiffs, are the only class of professionals that, by virtue of the Regulation, are compelled to perform services without compensation while no other professionals, such as court reporters, process servers, and expert witnesses, are required to provide their goods or services to the needy free of charge.

57. Attorneys in public service and those that work *ad honorem* for the judicial branch presumably have the same ethical obligation as the Individual Plaintiffs to ensure that all persons may receive adequate legal representation and to provide *pro bono* services to indigent persons. Yet, they are exempted by the Regulation from working for free or at unreasonable rates.

58. The Regulation thus creates classes of professionals and attorneys that are not treated equally in violation of the Equal Protection Clause.

VIII. Fifth Claim for Relief
(Taking)

59. Plaintiffs repeat and incorporate all the allegations contained in paragraphs 1 through 40 as if fully set forth herein.

60. “Private property shall not be taken for public use without just compensation.” U.S. Const., amend. V.

61. The Takings Clause is directly applicable to the federal government and is also applicable to the States through the Fourteenth Amendment. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922).

62. “The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

63. The Individual Plaintiffs right to earn a living through the practice of the legal profession constitutes their private property that is worthy of the protection afforded by the Takings Clause.

64. The Regulation imposes a categorical regulatory taking, likewise subject to the just compensation requirement of the Constitution. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992). By compelling the Individual Plaintiffs to provide 30 hours of free legal services and to continue providing services for an indeterminate amount of additional hours at the completely inadequate rates of \$30.00 and \$60.00 per hour, which

are not sufficient to cover their overhead, the Regulation perpetrates a categorical regulatory taking.

65. The Regulation perpetrates an additional taking by failing to allot the necessary funds and fiscal resources to reimburse the expenses incurred by the attorneys in the provision of free legal services to the needy and to pay fees to attorneys after the first thirty (30) hours of work in any given fiscal year.

IX. Prayer for Relief

WHEREFORE, Plaintiffs respectfully request the Honorable Court to:

A. grant injunctive relief precluding the Regulation from becoming effective on January 1st, 2020, prohibiting Defendants from taking any action to implement same and excusing the Individual Plaintiffs from having to file the electronic form and to render compelled *pro bono* services;

B. issue a Declaratory Judgment decreeing that:

1. the Individual Plaintiffs may not be forced to provide free legal services to indigent citizens in civil cases;

2. the Individual Plaintiffs may not be required to advance the expenses necessary to defend indigent citizens in criminal cases;

3. the hourly rates of \$30.00 for out of court services and of \$60.00 for in court services are unreasonable; and

4. the Regulation is unconstitutional because it infringes the Equal Protection and the Due Process Clauses;

C. tax Defendants with costs and attorney's fees; and

D. award any other and further legal or equitable relief as may be deemed just and proper.

Respectfully submitted, in San Juan, PR, on this 16th day of December, 2019.

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