CASE STUDY 5: COALITIONS AND CAMPAIGNS A WORKERS' RIGHTS POLICY CAMPAIGN

*Susan D. Carle**
*Sarah Leberstein***

I. BACKGROUND

A lawyer ("L") works on the staff of a national workers' rights policy organization ("WRPO"). WRPO conducts research and provides policy analysis, technical and legal assistance, and other campaign support to advance the rights of low-wage workers. WRPO is governed by a Board of Directors ("BoD") composed of leaders of workers' rights organizations, academics, policy people, and labor and employment lawyers. It is funded largely through foundation grants, supplemented with some contributions from labor organizations and individuals. It seeks to work in coalition with membership-based workers' organizations that request its help. Its BoD makes final decisions on what campaigns to work on, and it usually defers to the membership organizations with which it works on matters of campaign strategy.

After consulting with her supervisor—who is WRPO's legal director and who, in turn receives authorization from the BoD—L accepts the request of a workers' center ("WC") to join a campaign for state legislation to create a paid family and medical leave program for low-income workers in the state. This legislation will both benefit WC's constituency and advance WRPO's mission goal, which is to advocate at the national, state, and local levels for strengthened labor standards for low-wage workers.

WC is a loosely organized metro-based organization. It has a strong executive director who seems to make most decisions, with some input from a workers' council, which is composed of volunteer members of the organization and meets once or twice a year, if at all. Members pay

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* Professor of Law and Vice Dean, American University, Washington College of Law. Sincerest thanks to Bruce Green for excellent comments on an earlier draft.

** Senior Staff Attorney, Make the Road New York. J.D., 2008, Fordham Law School. Thank you to Brian Glick, Bruce Green, and Elly Kugler for their helpful comments on the hypothetical.

small yearly dues and WC receives some foundation funding. WC is itself affiliated with a national workers' organization ("NWO") made up of workers' centers from around the country.

WC has recently expanded into a contiguous state that is part of the metro region in which it is based. Although WC has a very limited membership in that state, it has launched a legislative campaign for the new state law on paid medical and family leave described above. L has previously worked on efforts to pass similar laws in other states and thus has substantial experience with this kind of legislative campaign.

WC asks several other organizations in the state, including labor unions and legal services organizations, to join its campaign. It does so to further their mutual goals and to fulfill certain functions WC cannot perform on its own, including generating worker turnout to lobby the state's legislators. WC asks L and two lawyers from other organizations to provide technical and legal assistance to the campaign, including to:

* analyze the current state of the law;
* give strategic and tactical recommendations to campaign partners;
* draft the legislation;
* draft fact sheets;
* join meetings with the state labor enforcement agency and lawmakers;
* recruit other campaign partners;
* testify in support of the bill; and
* lobby for the bill's passage.

WC suggests that all the campaign partners should sign a memorandum of understanding ("MOU") to outline their relationship with WC and the legislative campaign. Most of these organizations are put off by what they see as too much formality, however, so they do not sign such a document. The campaign thus proceeds without a formal agreement.

II. ISSUES

A. If WC asks L to act as counsel for the campaign, can she do so? Does it matter what WC has in mind when it asks L to serve as counsel?

The request to serve as "counsel to the campaign" is ambiguous. L currently is employed by and represents WRPO. Is L being asked, as WRPO's lawyer, to perform legal work on behalf of WRPO that will be helpful to the campaign? Is L being asked to *represent* WC in addition to WRPO? Or is L being asked to represent a new client comprised of a "coalition" that is not a legal entity and has no formal decision-making

structure? All of these are in the realm of possibility, but each has different ethical implications. A starting point is clarity: what does WC have in mind; do others in the coalition concur; and is the arrangement acceptable to WRPO, which, as L's employer and current client, can veto any proposed arrangement?

The easiest arrangement to analyze is one in which L represents solely WRPO, and in that capacity performs certain tasks that are helpful to all of the campaign partners. As long as everyone in the coalition understands L's role and agrees with it, and WRPO also concurs, L can serve in this role of assisting in campaign tasks but representing solely WRPO, subject to the caveat that she may not provide legal advice to non-clients, as discussed further below.[1]

In a second scenario, WC could become a joint client of L's along with WRPO. This scenario, in which L has dual clients, implicates conflict of interest rules. (Although one or more sets of state rules of professional conduct would apply to L, this analysis will use the American Bar Association's ("ABA") Model Rules of Professional Conduct ("MRPC").) Under Rule 1.7,[2] L would first have to ask herself whether she faced a conflict of interest. At the outset of the legislative campaign at issue in this case study, all potential clients have similar interests in the legislation's passage. However, as the unfolding facts in this case study will soon show, a conflict of interest could easily arise if WRPO and WC decide to take different paths in the course of the campaign. At a minimum, therefore, L should obtain informed consent from both WRPO and WC before agreeing to take on such a joint representation.

Many problems could arise that should be discussed. For example, if L has conversations with her supervisor at WRPO about misgivings she holds about the direction the campaign is taking, must L share those conversations with WC as a co-client? WC should understand such possibilities before deciding whether it wants L to serve as its legal counsel.

Whether L should accept WC as a client depends not only on L's analysis of conflicts problems, but also whether L thinks this is the best way to proceed as a matter of prudence and strategy. L may well question whether accepting WC as a client would be the best way to proceed as a matter of prudence. L does not seem to know WC very well, and WC seems to lack a governance structure that ensures strong accountability to its constituents. At the same time, L can do much to

1. *See infra* Part II.A, D.
2. *See* MODEL RULES OF PROF'L CONDUCT r. 1.7 (AM. BAR ASS'N 2018).

advance the campaign WC is spearheading without taking on WC as a client. Indeed, based on the facts presented, there does not seem to be much of a reason why L should take on WC as a client. L can work for the legislative proposal in question without representing WC, as already discussed, and working on the campaign with WRPO as her sole client avoids the conflicts problems that would arise if she were to take on WC and WRPO as dual clients.[3]

If L were to decide to take on WC as a second client, she first would have to obtain informed consent from both WC and WRPO, after explaining to both clients the consequences of conflicts between the two organizations arising in the course of the representation. Such informed consent should also spell out what L anticipates doing if a non-consentable conflict were to arise during the course of the representation. For example, would L anticipate withdrawing from representing WC but continuing to represent WRPO (if possible)?

The trickiest option for L would be to agree to represent the campaign coalition as a client. This is particularly true because the members of the coalition appear unwilling to give this loose grouping any formal structure. If L were to agree to take on the coalition as a client, L should insist on developing a clear process for coalition decision-making. The process need not be elaborate but should be articulated in writing for everyone's future reference. Without such an agreement among the members of the coalition as to how decisions are to be made, L would lack a means for receiving instructions from her client as to how to proceed in the representation.[4] Thus, L should explore whether the members of the coalition are willing to agree on a decision-making process. If they are not, L probably should not accept the coalition itself as a client.

There might be some advantages to representing the coalition itself, in that L could formulate legal advice and serve as the legal representative of the entire group. This could in turn lead to economies of scale and greater efficiency and cost savings. However, without a decision-making process that would allow L to receive clear instructions

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3. Another available alternative would be for L to represent WC but not WRPO as her sole client in this matter. Given that L is an employee of WRPO and receives her livelihood from this organization, she could find herself in a difficult position if a conflict arose between WC and WRPO's interests. We therefore do not recommend this option in this fact scenario, though there may be other situations in which it would be fine for a movement lawyer to represent a client in a matter but not also the organization that employs her. Indeed, this frequently happens in litigation in which the organization that employs a lawyer is not a party in the case.

4. *See* MODEL RULES OF PROF'L CONDUCT r. 1.13(a) cmt. 1 (noting that a lawyer who represents an organization represents the entity itself, as acting through the persons "duly authorized" to act and make decisions on its behalf).

from her client, L could quickly find herself facing conflicting demands from various members of the coalition. Thus, L should not agree to represent the coalition as a whole if the coalition lacks a means for giving her instructions through "duly authorized" representatives of the entity pursuant to Rule 1.13(a).[5]

But even if L does not accept the coalition as a client, there are other ways she can help out the campaign, as already noted above and discussed further below.[6] L can represent WRPO only and participate in the campaign as WRPO's representative, performing tasks for the entire coalition with everyone's consent.

As previously noted, L may not engage in activities that constitute the practice of law on behalf of persons or entities that are not clients. Thus, another important matter to flag is the question of which of the activities in which L expects to be engaged during the legislative campaign involve the practice of law. The rules of professional conduct generally apply only insofar as a lawyer is engaged in the practice of law;[7] in activities lawyers engage in that do not involve the practice of law, only the misconduct prohibitions of Rule 8.4 apply.[8]

To be sure, some activities performed by non-lawyers become practice of law when lawyers engage in them. An example is negotiating sports contracts, which both lawyers and non-lawyer sports agents do, but which clearly constitutes the practice of law when lawyers perform in this role. This is because lawyers who are negotiating contracts apply law to facts and give legal advice. But not all activities a lawyer does constitute practice of law just because a lawyer performs them. For example, a lawyer that organizes a campaign rally is not practicing law.

The line between what does and does not constitute practice of law can be a difficult one to draw. However, in the movement lawyering context it is sometimes important to draw this line in order to avoid over-restricting lawyers' freedom to engage in political activity. In addition, too cramped a reading of the MRPC restricts the resources available to social movements, which in turn leads movement activists to disregard the rules rather than working within them. Thus, it is worth taking time to carefully think through what activities a movement lawyer performs constitute practice of law, and thus should be performed only on behalf of clients, and what activities do not constitute the practice of law, and thus can be performed on behalf of broad constituencies with whom the lawyer has not formed a client-lawyer relationship.

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5. *See* MODEL RULES OF PROF'L CONDUCT r. 1.13(a).
6. *See infra* Part II.E.
7. *See* MODEL RULES OF PROF'L RESPONSIBILITY preamble & scope.
8. MODEL RULES OF PROF'L RESPONSIBILITY r. 8.4.

The rules regarding what constitutes practice of law are designed to protect clients. Thus one guideline we would propose is that, to the extent that lawyers are performing activities that do not cause non-clients to rely on them for legal advice, there is no reason lawyers should not be able to perform those activities for movement constituencies without taking them on as clients. To the extent that some activities that L expects to perform for the campaign do not involve the practice of law and do not lead non-clients to rely on her for legal advice, L can perform them on behalf of all of the coalition partners.

What constitutes practice of law is a complicated question, and what constitutes practice of law in the context of movement lawyering is potentially even more complex. Different states have widely varying laws on the topic,[9] and the ABA Rules of Professional Conduct do not address this question. In 2002, an ABA Task Force on the Model Definition of Law proposed a definition, which stated that, "[t]he practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law."[10] It withdrew its proposal in 2003, following objections from the Federal Trade Commission ("FTC"), the U.S. Department of Justice ("DOJ"), and other groups that argued that this definition was too broad and anticompetitive.[11] Instead, the ABA Task Force urged states to continue to adopt their own definitions.[12]

Even under the ABA Task Force's arguably over-broad proposal, two exclusions this proposal implicitly encompassed are of relevance here. First, the definition excludes activities that non-lawyers routinely perform; and, second, it requires assessing the circumstances *of a specific "person"* (which can, of course, be a specific entity) rather than a broad constituency or interest group.[13]

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9. *See, e.g.*, *Task Force on the Model Definition of the Practice of Law: Appendix A: State Definitions of the Practice of Law*, AM. BAR ASS'N (2016), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-def_migrated/model_def_statutes.authcheckdam.pdf [hereinafter *Appendix A*] (compiling state laws).

10. *See Task Force on the Model Definition of the Practice of Law Draft*, AM. BAR ASS'N (Sept. 18, 2002), https://www.americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/model_definition_definition.html (last updated Oct. 5, 2011) [hereinafter *Task Force*].

11. *See U.S. Fed. Trade Comm'n & Dep't Justice, Comments on the American Bar Association's Proposed Model Definition of the Practice of Law* (Dec. 20, 2002), https://www.justice.gov/atr/comments-american-bar-associations-proposed-model-definition-practice-law.

12. *Id.*

13. *See generally Task Force*, *supra* note 10.

As applied to this case study, the first exclusion just mentioned arguably eliminates from the scope of what constitutes practice of law a number of activities that non-lawyers also frequently do competently and in which L anticipates being involved. These include, in the list above:

* giving strategic and tactical recommendations to campaign partners;
* drafting fact sheets;
* joining meetings with the state labor enforcement agency and lawmakers;
* recruiting other campaign partners;
* testifying in support of the bill (where legal analysis is not involved); and
* lobbying for the bill's passage.

When a movement lawyer engages in these activities, she arguably participates in these activities as a movement activist rather than as a lawyer representing a client. To be sure, the lawyer may bring her legal training and knowledge to her performance of these activities, but non-lawyers traditionally perform these activities with a high degree of competence as well.

As to the second exclusion above—namely, solving the legal problems of specific persons or entities—performance of some of the activities listed above does not constitute the practice of law because L would not be applying her legal expertise to solve the problems of a *specific* person or entity. Some states include this factor in their definitions of practice of law, and it helps distinguish lawyers' work on policy matters from that of solving client-specific problems.[14]

When L is performing tasks on behalf of the coalition, L should be clear on what role she is playing in situations in which coalition members could become confused about her role. For example, if a coalition partner asks L to state her legal views on matters that arise in the course of the campaign, L should clarify that she is offering her legal views solely as the legal representative of whomever she has agreed to represent as her client(s). In contrast, when she is giving her opinions on

14. *See, e.g.*, RULES OF THE S.C. AZ., REGULATION OF THE PRACTICE OF LAW r. 31(a)(2)(A)(1), (2) & (5) (West 2018) (defining the practice of law as, *inter alia*, preparing legal documents, opinions or negotiating legal rights for "a specific person or entity"); RULES GOVERNING THE WYOMING STATE BAR & THE AUTHORIZED PRACTICE OF LAW, r. 7(c) (defining the practice of law as, "providing any legal service for any other person, firm or corporation, with or without compensation, or providing professional legal advice or services where there is a client relationship of trust or reliance, including appearing as an advocate in a representative capacity; drafting pleadings or other documents; or performing any act in a representative capacity in connection with a prospective or pending proceeding before any tribunal.").

matters of general policy or strategy, L should clarify that she is not offering these as *legal* opinions or advice; instead, she is participating in these discussions as a fellow movement activist.

While some activities L will perform in working on the campaign likely do not involve the practice of law, others do. L is practicing law when she applies law to facts to render legal advice to a specific person or entity, such as when she is "analyzing the current state of the law," as described in the likely tasks listed above. When L does this, she should state that she is offering her legal analysis on behalf of WRPO if that is her sole client in the matter.

Finally, it is ambiguous whether some activities L anticipates involve the practice of law. In this category falls:

* *Drafting the legislation.*

In drafting legislation, L is engaging in an activity that non-lawyers often perform competently. Moreover, in this scenario she is not applying her legal expertise to solve the problems of a specific person or entity—although in other situations lawyers may be doing so and then would be practicing law. L can avoid any ambiguity on this score by stating that, to the extent her contributions involve applying law to specific facts, she is engaged in legislative drafting as the legal representative of her client(s).

* *Giving advice to the campaign partners as to whether various proposals will effectively carry out policy objectives*.

Here again, L's role does not involve applying law to facts to give legal advice to a specific person. It instead involves policy analysis, which non-lawyers frequently do competently and which does not involve performing legal analysis about any specific person or entity. Thus, in context L's role in providing policy advice does not appear to involve practicing law, though the specifics of the policy advice would have to be explored in order to reach a definitive conclusion about whether L was giving legal advice along with policy recommendations. Again, it would be a good idea to explain this to all campaign partners and to remind them that to the extent legal analysis is involved in L's policy analysis, that advice is directed to the interests of WRPO.

B. Does the lawyer's greater loyalty to WRPO preclude her from representing the campaign coalition? If she represents the coalition, can she also act on behalf of WRPO individually?

No, L's greater loyalty to WRPO does not necessarily preclude her from representing the campaign coalition, provided all of the conditions

discussed in answer (A) above are met.[15] As already explained there, this approach is probably not a good idea, especially given that other alternatives are available.

In deciding whether representing the coalition is possible, L must first determine whether she has an actual or potential conflict on her hands. Here it appears that L already faces an actual conflict at the start of the campaign, given that her greatest loyalty is to her primary client and employer, WRPO. Thus, at the outset L must determine if she reasonably believes that she can provide effective representation to both clients, as per Rule 1.7(b)(1).[16] She must also obtain informed consent from both clients after explaining the risks of joint representation, as required under Rule 1.7(b)(4).[17]

In short, L could represent the coalition and act on behalf of WRPO individually, but only insofar as she obtained informed consent from both clients and assured herself that she would not be harming the interests of either the coalition or WRPO in this representation. If she found herself unable to do so, she would have to withdraw from representing at least one of these clients because L would find herself in a position in which her representation of one client materially limited her ability to represent another, in which situation, she could no longer represent both clients. In other words, the conditions for continuing to represent both clients would not be present, as explained in Rule 1.7(a)(2).[18] This question thus helps illustrate why it probably would not be a good idea to take on both the coalition and WRPO as clients in this particular fact scenario.

C. What would have to be the ground rules for representing more than one client in this situation?

As already noted above, Rule 1.7(a)(2) provides that, in taking on a client, the lawyer must ensure that her representation of that client is not materially limited by her representation of another client or any other consideration.[19] She must also obtain the informed consent of all of the relevant clients, under Rule 1.7(b)(4). This includes explaining to them the risks of joint representation and the likely process the lawyer would undertake if required to withdraw from one or more representations if a non-consentable conflict were to arise during the representation.[20]

15. *See supra* Part II.A.
16. MODEL RULES OF PROF'L CONDUCT r. 1.7(b)(1) (AM. BAR ASS'N 2018).
17. *Id.* r. 1.7(b)(4).
18. *Id.* r. 1.7(a)(2).
19. *Id.*; *see supra* Part II.B.
20. *See* MODEL RULES OF PROF'L CONDUCT r. 1.7(b)(4).

Finally, as already discussed above, she would have to ensure that any organizational client(s) she agreed to represent had a clear decision-making structure that would allow her to receive instruction through duly authorized agents.

Now assume that L decides, in light of all of the considerations discussed above, that she will become involved in the legislative campaign as the lawyer representing WRPO. Thus, in meetings with lawmakers and agency staff, testimony, and in writing op-eds and the like, L identifies herself as a lawyer representing WRPO. She does not say that she is the coalition's or WC's lawyer. In several instances, however, no one from WC ends up being present during conversations L has with lawmakers or other decision-makers. These figures ask for L's opinion on proposed revisions to the bill.

D. Does L have an implicit lawyer-client relationship with WC, or has she led WC to rely on her as counsel?

To answer this question, some additional facts would be helpful. In these communications, is L expressing her personal opinion, her client's opinion, or the coalition's opinion? Assume that L is acting as the representative of WRPO. As long as she states this, L can also say that WRPO is a member of the coalition and that she is acting on behalf of the coalition, provided that is the case. As a good coalition member, WRPO will want to promote the coalition's views and maintain a good relationship with WC, an important coalition member. If there is a crucial difference of opinion, WRPO, through L, should seek to thrash it out with WC.

Indeed, WRPO can authorize L to act in the best interests of the coalition as a whole. After clarifying that she is representing WRPO, L can, under instructions from WRPO, act in ways that benefit the entire coalition. In doing so, she is simply following her client's instructions. For example, WRPO can listen to the input of campaign members and then say, "I am not giving you advice or working for you as a client but only for WRPO. However, as a good coalition member, WRPO wants to develop and promote proposed legislation that satisfies the goals of the entire coalition and keeps the coalition together. After listening to everyone's input, here is what I propose on behalf of WRPO and why . . . ." This may involve the practice of law, but L is clear that she is acting for WRPO only, under the instructions she has received from her client to strive to take account of everyone's interests, at least for the time being. This is different from giving legal advice to

non-clients, because these non-clients clearly understand that L is solely WRPO's lawyer.

At the same time, for all of the reasons discussed above, L should take care to avoid the creation of an implicit client-lawyer relationship with WC.[21] L should be careful to ensure that WC does not view her as its counsel. To do so, L should explain to WC that she does not intend to enter into a client-lawyer relationship with WC. She should do so in writing to memorialize this understanding. Such a writing may not be enough to disclaim the existence of a client-lawyer relationship, however. If L finds that WC appears to be relying on her for legal advice, L should explain that she is solely representing WRPO and suggest that WC obtain its own independent legal advice.[22]

E. If L does not act as counsel to the campaign coalition, must she clarify to lawmakers that she speaks only in the capacity of a representative of WRPO and not on behalf of WC or the campaign?

L is not required by the MRPC to state affirmatively that she speaks only in the capacity of a legal representative of WRPO, but if she sees that others misunderstand her role, she is required to correct such a misunderstanding.[23] For this reason, the best practice for L would be to introduce herself as the representative of WRPO at the outset of any meeting. If the coalition has authorized her to speak on its behalf, she can say so. For example, she can say (if accurate) that she is the lawyer for WRPO, and the campaign coalition has authorized WRPO to speak for the coalition in a particular meeting.

Note as well that some of what L might be doing in such meetings with lawmakers may not cross into the realm of practicing law, in which case L would be bound by legal ethics rules only with respect to the dictates of Rule 8.4 (which provide in essence that lawyers may not lie, cheat, or steal even when engaged in activities that do not involve the practice of law).[24] Nevertheless, there is no reason not to clarify that, to the extent that she is practicing law, L is acting solely as a legal representative of WRPO. Thus, it would be best practice for L consistently to identify herself as the legal representative of WRPO rather than allowing the potential for confusion to arise.

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21. *See supra* Part II.D.
22. MODEL RULES OF PROF'L CONDUCT r. 4.3 (AM. BAR ASS'N 2018).
23. *See id.*
24. *Id.* r. 8.4.

F. May L provide her own analysis to lawmakers if WC is not present? Must she consult with all coalition partners before having such meetings?

In terms of the rules of legal ethics, L can provide a legal analysis to lawmakers on WRPO's behalf, as the lawyer for WRPO alone and without WC present, provided that she does not mislead lawmakers as to whom she is representing. Whether she must consult with all coalition partners before such meetings does not depend on the rules of legal ethics but on the agreements the campaign members have with each other as to how they will work together as a coalition.

Now assume that tensions arise among the coalition members during the course of the campaign when lawmakers reintroduce a significantly weakened version of the bill. WC wants to proceed with the campaign in the hopes of scoring what may be largely a symbolic victory. WC feels this could create momentum for future efforts. However, WRPO and other campaign partners believe continuing with the campaign at this point could undermine future efforts with greater potential to enact meaningful reforms. WC's national affiliate, NWO, agrees with WRPO, but NWO has no power over WC's actions.

G. Does L have to stop her involvement in the campaign when this conflict arises among the campaign partners?

Whether L would have to stop her involvement in the campaign depends on whom L represents. Indeed, this scenario illustrates the reason it is so important to obtain clarification at the outset of any representation as to who a lawyer's client(s) is (or are). L has no conflicts problem here if WRPO is L's only client and L has avoided creating a de facto client-attorney relationship with any other campaign partners during the campaign. A court would answer this question by looking to the reasonable expectations of the non-lawyer clients. Whether L should continue to participate in the campaign in the situation described above would depend on what WRPO, speaking through its decision-maker, the BoD, directs her to do. This will largely involve strategic judgments that L may assist WRPO in making. In short, L represents WRPO and should continue to represent WRPO's interests as WRPO defines them.

If L represents two or more clients in the campaign, however, and a non-consentable conflict arises among those clients, then L will have to withdraw from representing one or more of these clients. The clients may have agreed to waive conflicts of interests at the outset, but note

that such advance waivers do not apply to non-consentable conflicts, which can take many forms. (One classic example involves a lawyer holding material confidential information about Client One that is important for Client Two to know, but which Client One refuses to authorize the lawyer to disclose to Client Two.)

In the instant case study, it appears that such a non-consentable conflict has arisen. L cannot both continue to advocate for the legislation, as WC wants to do, and at the same time stop doing so, as WRPO and the other campaign partners want to do. This is especially true if L represents the coalition and the coalition has no process for making decisions when it encounters disagreements among members. The situation described above illustrates the reason it would probably be unwise for L to agree to represent the coalition if its members do not want to adopt a decision-making process that would allow them to give instructions to L in cases of internal disagreement among the campaign coalition members.

The most likely kind of conflict that would cause L to have to withdraw from some but not all clients in a multiple representation situation is one in which L reasonably feels that she cannot provide effective representation to all clients. That seems to be the type of conflict that would be at issue here if L had taken on the representation of both WRPO and WC. The divergent strategies the two organizations want to pursue cannot be taken simultaneously; the coalition can either proceed with a watered down bill or it can decide not to proceed with this bill, but it cannot do both.

In this situation, L should withdraw from representing one or more clients as necessary to eliminate the conflict (following the process she formerly spelled out to the clients at the outset of the representation) as discussed above.[25] This question illustrates the importance of spelling out at the outset of any joint client representation a sensible process for withdrawing from representation if necessary, so that a procedure for handling this possibility is in place *before* a non-consentable conflict arises.

III. CONCLUSION

In sum, this case study reflects some of the potential ethics questions that can arise as a result of a "messy" coalition, in which one organization starts a legislative campaign and later invites other allies or potential allies to join it. It further illustrates that one should not assume

25. *See supra* Part II.G.

that local grassroots organizations are more accountable to constituents than national organizations; sometimes that is true but in other situations it may not be. What appears key, as reflected in this case study, is the importance of urging movement organizations to develop reasonable systems for decision-making and accountability, so that lawyers can rely on decision-making processes within client organizations for instructions and guidance as they represent these clients.

Finally, this case study raises difficult questions about which of the many types of creative work movement lawyers do constitute "the practice of law" for purposes of legal ethics analysis. Further analysis of those difficult questions is important so that legal ethics rules continue to provide appropriate safeguards to clients but are not applied in an overbroad manner. Overbroad application of legal ethics rules risks constraining the potential creativity of movement lawyers as they strive for new and more effective ways of proceeding in partnership with other movement actors to achieve movement goals.[26]

26. *See generally* Susan D. Carle & Scott L. Cummings, *A Reflection on the Ethics of Movement Lawyering*, 31 GEO. J. LEGAL ETHICS 441 (2018) (discussing specific legal ethics challenges that arise in movement lawyering and arguing that standard ethics principles require revision in order to better facilitate the important work that movement lawyers do).