



Update from AAJ Linda A. Lipsen

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AAJ is working to protect your practice

PERSONAL JURISDICTION BEFORE THE U.S. SUPREME COURT, AND NON-LAWYER OWNERSHIP AND FEE SHARING IN TWO STATES

WASHINGTON UPDATE

As of this writing – two weeks before Election Day – the 2020 vote is on everyone's mind. I will be providing a post-election update next month. But now, know that in the face of rampant voter suppression, AAJ stepped up to ensure that voting rights are upheld. Our Voter Protection Action Committee (VPAC) developed national and state partnerships with leading voter protection groups to create non-partisan volunteer opportunities such as being a poll worker; acting as a poll monitor; working in virtual or in-person call centers; volunteering in person in battleground states; and promoting voter education resources. I am pleased to report that these efforts have connected more than 1,000 people with volunteer opportunities.

Below are some other highlights of how AAJ is working to protect your practices, your clients' rights, and the future of civil justice.

Personal jurisdiction cases before the U.S. Supreme Court

The U.S. Supreme Court recently heard arguments in cases raising personal jurisdiction issues that are likely to have a major impact on how specific jurisdiction is applied in consumer actions. The Court's decision could break the trend of limitations to jurisdiction that make it harder for injured plaintiffs to hold large corporations accountable. AAJ knows how important this is for you and your practices, and we have been focused on these issues for several months.

Oral arguments pertaining to personal jurisdiction cases took place October 7 before the U.S. Supreme Court for *Ford Motor Co. v. Montana 8th Judicial Dist. Court* and *Ford Motor Co. v. Bandemer* (U.S. 19-368; cases consolidated). The issue before the Court is "whether the 'arise out of or relate to' requirement of the 14th Amendment's due process clause is met when none of the defendant's forum contacts caused the plaintiff's claims, such that the plaintiff's claims would be the same even if the defendant had no forum contacts." AAJ and Public Justice filed a joint amicus brief which you can access at www.justice.org/resources/research/ford-motor-co-v-montana.

AAJ, working with the Attorneys Information Exchange Group (AIEG), has led media outreach on this case and its importance to consumers – garnering significant coverage of our position and those supporting it. For example, the Washington Post considered it one of their key cases to watch this term, and AAJ member Deepak Gupta of Gupta Wessler PLLC, who argued the case on behalf of plaintiffs, has briefed several news outlets to help ensure any preview or argument coverage underscores the critical importance that the outcome will have on consumers and small businesses. A full compilation of the media generated about this can be found at www.takejusticeback.com/FordMediaCoverage.

Regulatory changes in Arizona and Utah open door to nonlawyer ownership and fee sharing

Over the past few years, two states – Arizona and Utah – have moved toward opening up the practice of law to nonlawyers. In August 2020, those states' respective Supreme Courts revised the rules governing the practice of law to allow nonlawyer fee sharing and investment in firms.

Utah adopted "Standing Order No. 15" and made changes to Rules 1.5 (fees), 5.4 (fee sharing), and 7.1-5 (advertisement). Standing Order No. 15,

along with accompanying regulatory changes, established the "Office of Legal Services Innovation" to administer a regulatory "sandbox" for companies seeking to "innovate" in their legal service delivery structure. Tracking the newly rewritten Rule 5.4, any entity seeking to engage in the practice of law with a nonlawyer equity investor or to share fees with a nonlawyer must apply for regulatory approval. The regulatory process is meant to be more hands on, involving a probationary "sandbox" period where it is envisioned that the firm will work closely with regulators to develop a "right sized" rules package meant to protect Utah consumers before emerging into a more normalized, hands-off regulatory period.

Arizona has delayed the implementation of their rule until January 1, 2021, but the rule changes are much more extensive. In Arizona, the Supreme Court eliminated ER 5.4 (fee sharing) while also modifying Rules 7.1-5 (advertisement). This opens the floodgates for not only nonlawyer ownership of law firms but also paying referral fees to nonlawyers. Accompanying this change is the introduction of a new regulator for "Alternative Business Structures" ("ABS"), which constitutes any firm "that includes nonlawyers who have an economic interest or decision-making authority in the firm and provides legal services." These new entities will need to apply for a license to operate with nonlawyer investors/partners prior to operating. However, this ABS regulator does not have any authority over the payment of nonlawyers for referrals – a practice that now appears to be completely ungoverned.

AAJ State Affairs and the TLAs will continue to track these developments, not only in Utah and Arizona as they are implemented, but also in other states considering similar changes.

Federal rulemaking – Formal comment period open

This fall, there are several proposed amendments in both informal and formal rulemaking. AAJ follows these issues closely because rules adopted at the federal level are often also adopted by state courts.

Informal draft rules are available for MDLs and FRE 702 and will be discussed by the respective Advisory Committee on Civil Rules and the Advisory Committee on the Rules of Evidence at their fall meetings. The advisory committees will also discuss emergency rules – which Congress directed be undertaken in the CARES Act legislation enacted into law in March 2020. For more information on these informal draft rules and emergency rules, please email susan.steinman@justice.org.

Four proposed rules changes are in formal rulemaking that may be of interest to AAJ and state TLA members: Fed. R. Civ. P. supplemental rules for Social Security cases; Fed. R. Civ. P. 12(a)(4) (government immunity defense); Fed. R. App. P. 25 (railroad retirement); and Fed. R. Crim. P. 16 (expert witnesses). For more information on each proposed amendment, please contact Susan Steinman at susan.steinman@justice.org.

AAJ encourages you to review the proposed amendments and submit a short comment about the effect of any of the proposed rules on your practice. The formal comment period runs through February 16, 2021, and comments must be submitted electronically. Information on how to submit a comment can be found at uscourts.gov/rules-policies/proposed-amendments-published-public-comment. AAJ has additional information available on all rules issues; for more information, please contact Sue Steinman (susan.steinman@justice.org) and Amy Brogioli (amy.broglioli@justice.org).