

**SUBJ: Lawsuit challenges unconstitutional suppression of lawyer communication with prospective clients**

# **Choosing Justice Initiative Files Lawsuit to Protect Free Speech Rights of Nashville Public Interest Lawyers**

***Incarcerated man's claim about deficient court-appointed lawyer prompted gag order***

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NASHVILLE, Tenn. – The **Choosing Justice Initiative, a non-profit public interest law firm in Nashville, and its founder and executive director, Dawn Deaner**, filed a lawsuit in federal court earlier this week challenging the unconstitutional suppression of their speech by a local judge and the Tennessee Board of Professional Responsibility. They are represented by **Charlie Gerstein, a senior attorney with the national group Civil Rights Corps (CRC)**, and founder of its indigent defense advocacy initiative, and **Seth Wayne and Nicolas Riley, who are senior counsel at the Institute for Constitutional Advocacy & Protection at the Georgetown University Law Center in Washington, D.C.**

The lawsuit asserts that the defendants' actions violate the First Amendment rights of Deaner and CJI employees to communicate with prospective clients in Nashville's jails about potential violations of their constitutional right to adequate defense representation.

In Nashville, people languish in jail every day because they cannot pay the money required for their release by local judges, and because the attorneys appointed by those judges to represent them do not fight for their release. These people are often trapped: unable to speak for themselves, and with no one to speak on their behalf.

"We have run into a lot of issues with court-appointed attorneys," said **Dawn Harrington, founder and executive director of Free Hearts**, a grassroots organization that works with incarcerated women in Nashville, and holds weekly meetings with loved ones of people awaiting trial here. "Your attorney is supposed to be your advocate, and put up a defense for you, but we don't see that. Instead, we see court-appointed lawyers who hardly ever visit or talk to their clients, and some who treat them with blatant disrespect."

In September 2019, CJI set out to help one such person who had been in jail for over a year. He sent CJI a letter asking for help, because his attorney was not living up to the standards required by the Constitution. After communicating with him, Deaner concluded that his rights were at risk, and offered to file a motion on his behalf to help him get a lawyer who would fight for his rights. When she did, local authorities sought to silence and punish her. She was ordered not to speak to people represented by attorneys without their lawyers' permission, and was told that doing so may result in discipline with the state bar. Meanwhile, the man she sought to help still remains in jail today.

"The quality of legal representation a person receives is one of the most significant wealth-based disparities in the criminal legal system," Deaner said. "I founded CJI to address the injustice and harm caused by Tennessee's court-appointed counsel system. Gag orders and court rules that prohibit lawyers from talking to people about their legal rights violate the First Amendment. They also perpetuate an unfair two-tiered system of justice. I've watched this happen for too long, and will not remain silent any longer."

According to Dawn Harrington, "What CJI is doing is desperately needed for our people. They deserve an adequate defense and a choice in who represents them, but it is virtually impossible to get an appointed lawyer replaced."

**Mike Working, the president of the Tennessee Association of Criminal Defense Lawyers (TACDL)**, also spoke out in support of CJI and Deaner. "Failures of Tennessee's court appointed counsel system are long-standing, and improvements have come as a result of TACDL suing the system and fighting to improve it. Despite the serious deficiencies, TACDL members still accept court-appointments with net pay below minimum wage because they believe in the right to a zealous defense. TACDL also believes that any accused citizen should be free to seek a second opinion from any lawyer they choose. Tennessee's attorney rules of conduct permit that, and any other interpretation is contrary to the language and spirit of those rules." Working pointed out that "criminal defense lawyers in Tennessee routinely engage in these communications, and should not face disciplinary sanctions. It appears the Board has a fundamental misunderstanding of some basic workings of the criminal justice system."

The lawsuit, *Deaner v. Board of Professional Responsibility of Tennessee and Judge Cheryl Blackburn*, was filed in U.S. District Court for the Middle District of Tennessee. CJI and Deaner are also seeking a preliminary injunction against the Board to prevent any disciplinary proceedings pending the outcome of this lawsuit.

A copy of the complaint filed is available at: [www.cjinashville.org/bprcomplaint](http://www.cjinashville.org/bprcomplaint)

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