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## Newsroom: Margulies on 'Ghostwriting'

Roger Williams University School of Law

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# Newsroom

## Margulies on 'Ghostwriting'

Professor Peter S. Margulies explains when and why the practice of 'ghostwriting' is permissible under Rhode Island civil rules and rules of professional conduct.

**From Rhode Island Lawyers Weekly:** ["Prof helps lift 'ghostwriting' sanctions against attorneys"](#) by Pat

Murphy



**June 26, 2015:** The Rhode Island Supreme Court recently lifted sanctions against three attorneys who authored pleadings on behalf of *pro se* defendants in separate debt collection cases.

**Peter S. Margulies** lent a helping hand to the court in clarifying whether the practice of ghostwriting is permissible under the state's civil rules and rules of professional conduct.

**The Roger Williams University School of Law professor** wrote the Rhode Island Bar Association's amicus brief in *FIA Card Services, N.A. v. Pichette*, arguing in support of the lawyers who sought to have the sanctions against them overturned.

In *FIA Card Services*, the court held that Rule 11 of the Superior Court Rules of Civil Procedure does not apply to an attorney who authored a pleading but neither signed it nor entered an appearance in the case.

[...]

**Margulies** recently discussed the decision with *Lawyers Weekly's* Pat Murphy.

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*Q. Why is ghostwriting an ethical issue at all?*

A. It's an ethical issue because of a couple of factors. One, the Superior Court found that ghostwriting was a violation of Rule 11 because the lawyers had not signed their names, and Rule 11 requires that you do that because you want to make sure lawyers stand behind their work. You could argue that lawyers who don't stand behind their work are somehow being dishonest or deceptive. That, in turn, is arguably a violation of Rule 8.4 of the Rhode Island Rules of Professional Conduct, which says you can't be deceptive with clients or with the court.

Secondly, Rule [of Professional Conduct] 1.2(c) says lawyers can shape or tailor the representation that they engage in with clients, but that tailoring has to be reasonable. And the lawyer has the burden of showing that. We want to safeguard clients and make sure that lawyers and clients only agree on what is reasonable. So because of client vulnerability as well and the possibility of dishonesty or deception, [ghostwriting] could be an ethical issue.

*Q. What was your argument that the attorneys sanctioned by the Superior Court had not violated any professional rules of conduct when they ghostwrote pleadings in debt collection cases?*

A. We argued it's a good thing for both lawyers and for clients that Rule 1.2 allows lawyers to tailor the scope of representation. The **[RWU Law] Pro Bono Collaborative** submitted an amicus brief, too. They argued that ghostwriting promotes access to lawyers. Unless you're affluent, it's very difficult to afford lawyers these days. For us, the access-to-justice issue was very, very important, and we were gratified that the court found it very important, too.

*Q. Under what circumstances do you believe that ghostwriting should be deemed a violation of the rules?*

A. It would be a violation if a lawyer wrote something completely irresponsible or inaccurate and outside of professional standards. Giving a client bad advice, whether you do it in a signed piece of paper or an unsigned piece of paper is clearly unreasonable and inappropriate.

*Q. What lessons do lawyers need to take from this case should they agree to write on behalf of pro se litigants?*

A. You must exercise due diligence and be as responsible as you would be with any other kind of representation. And in order to comply with the court's decision, you have to sign your name on the dotted

line. The reason the court did that is because that way lawyers are accountable for the work that they do for clients. So in that sense the court really didn't approve ghostwriting. The court said generally you have to sign your name, identify yourself, and stand behind your work product.

*Q. Because the court was in essence announcing a new rule, it didn't apply retroactively to these three attorneys?*

A. Correct.

*Q. Was the Supreme Court's treatment of ghostwriting consistent with other jurisdictions?*

A. Yes, it's consistent with most state court rulings and the best federal rulings, including the 2nd [U.S. Circuit Court of Appeals].