

**Lori Gayle Nuckolls, Esq.  
1237 Paddock Hills Avenue  
Cincinnati, Ohio 45229-1219**

**Lori.Nuckolls@post.harvard.edu  
lnuckoll@wellesley.edu  
lorigaylenuckolls@cinci.rr.com  
513-305-7902**

December 25, 2017

Joint Committee on Agency Rule Review  
The Ohio General Assembly  
Vern Riffe Center  
77 South High Street  
Concourse Level  
Columbus, Ohio 43215

Sent Via Email to: [jcarr1@jcarr.state.oh.us](mailto:jcarr1@jcarr.state.oh.us)

Re: Attorney General Proposed Rules 109:7-1-05  
(disbursements) and 109:7-1-06 (definitions)

Dear Members of the Joint Committee on Agency Rule Review,

I write with interest in the proposed addition to the Ohio Administrative Code of new rules 109:7-1-05 and 109:7-1-06 by the Attorney General regarding the implementation of funding provisions for rape crisis programs under the auspices of the federal centers for disease prevention and control and denominated in the Ohio Revised Code as the “Rape crisis program trust fund.” Ohio Revised Code § 109.921. This program, as enacted, envisions comprehensive services for victims of sexual trauma.

The Ohio Revised Code mandates the Attorney General to provide funding to a “Rape crisis program,” which, as most broadly defined by statute, includes a “nonprofit [nongovernmental] entity that provides a **full continuum** of services to victims of sexual assault, including hotlines, **victim advocacy**, and support services from the onset of the need for services through the completion of healing ....” § 109.921(A)(1)(c) (emphasis added). And, the Ohio Revised Code states that “[a] rape crisis program that receives funding ... shall use the money received ... for the following purposes [among others]:” “(2) ... hotlines, **victim advocacy**, or support services.” O.R.C. § 109.921(D) (emphasis added). However, in contradiction to the foregoing express grant of statutory authority for the funding of “victim advocacy,” the new rule

**Comment Letter of December 25, 2017, of Lori G. Nuckolls, Esq., re: Rules 109:7-1-05 and 109:7-1-06**

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109-7-05 proposed by the Attorney General expressly prohibits the use of funds for “Lobbying activities.” Proposed Rule 109-7-05(F)(1).

It does not seem that the Attorney General has included a definition of “Lobbying” in the proposed new rules. See, Proposed Rule 109:7-1-06 (definitions governing the trust fund). Nor does a definition of either “advocacy” or “lobbying” seem to appear in any other source of authority that would be applicable to this funding provision, apart and distinct from those generally previously existing under Ohio law. See, O.A.C. § 109:7-01-03 (definitions governing trust fund) and O.A.C. § 109:7-1-04 (procedures for submitting funding requests). See also, O.R.C. §101.70(E) (to “Actively advocate” deemed “Legislative lobbying.”); O.R.C. § 121.60(I) (“[C]ontacts made to promote, oppose, or otherwise influence ... an executive agency decision” deemed “lobbying activity.”); and O.R.C. § 3517.20(A)(1), (2), & (3) (defining “Political communications” as those statements “for or against” or “advertising”).

The funding by the Attorney General should encourage productive informal discussions on diverse topics. The proposed funding would, and is needed to, do so. However, the prohibition on lobbying efforts in the proposed rule should be clarified for those entities to be funded. Discussion by program participants should relate to important, current issues in the community, especially as to those seeking support for transitions in difficult times. Activities financed under this trust fund would be an act of the governmental or nonprofit entity, and would not constitute a use of the funds by individual persons in behest of personal expression on various topics. Thus, some revision is indicated for the avoidance of express contradiction of the proposed rules with the authorizing legislation, and even as to contradiction within the very proposed rules, as to the use by the Attorney General of both “advocacy” and “lobbying.”

I offer that the Attorney General should modify the proposed rules to not expressly reach issues of “lobbying,” which under Ohio law includes advocacy. Rather, the Attorney General should only expect funding recipients to remain in compliance with the general laws governing lobbying and political influence. Consequently, funded centers could guide program participants on an individual basis as to personal issues and only be reviewed if they as fund recipients assert interested positions. This would prohibit persuasive statements or presentations by the funded entities which would constitute lobbying under Ohio law, yet still permit funds to support conversation among participants. And, the written informational material and oral presentations of advocacy organizations unaffiliated with the fund recipients could be made available in the ordinary course to permit informed decision making by program participants.

I thank you greatly for considering my comments on this rule. And, I may certainly be contacted as indicated above.

Sincerely,

*Lori G. Nuckolls*

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