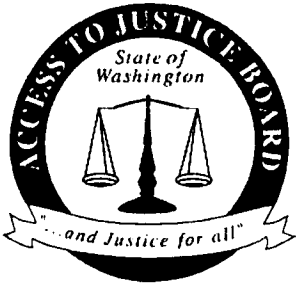


1.8(e)+(g), 1.15A, 6.1, 6.5



MEMBERS

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- Christine E. Crowell, Chair
- Julian C. Dewell
- Pamela H. Feinstein
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April 29, 2005
 Hon. Gerry L. Alexander, Chief Justice
 Washington State Supreme Court
 Temple of Justice
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 Olympia, WA 98504-0929

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 GUYER

Re: Comments to Proposed Changes to Rules of Professional Conduct

Dear Chief Justice Alexander:

The Access to Justice (ATJ) Board appreciates the opportunity to comment on the proposed changes to the Rules of Professional Conduct (RPCs) currently before the Court. In submitting these comments, the ATJ Board recognizes and commends the extensive work of the Washington State Bar Association's (WSBA) Special Committee for the Evaluation of the Rules of Professional Conduct (Ethics 2003 Committee) and the deliberative review undertaken by the WSBA Board of Governors prior to submission of the proposed changes to the Court. Thus, in general, the ATJ Board strongly endorses the proposed changes and, subject to the comments below, urges the Court to adopt the rules and related Commentary as proposed. Because there are a few particular proposed changes to the RPCs that are of special interest to the ATJ Board, these limited comments are directed to those specific provisions.

Fundamental Principles of Professional Conduct

The Fundamental Principles of Professional Conduct set out the overarching context for the RPCs and provide the broader ethical framework with which all Washington lawyers should comply. While the proposed Preamble (based on the American Bar Association's Model RPC Preamble) contains some of the concepts set out in the Fundamental Principles, the Preamble as written is more directed to the functional aspects of practicing law. Though the ATJ Board recognizes that the RPCs must inform the daily activities of the practice of law, the current statement of Fundamental Principles recognized by the WSBA Board of Governors should be preserved "to inspire lawyers to strive for the highest possible degree of ethical conduct," which continues to be the hallmark of the profession.

RPC 1.8: Specific Conflicts of Interest

- **RPC 1.8(e)(2)**: Proposed changes to RPC 1.8(e) would, for the first time in Washington, authorize a lawyer or law firm providing free legal services to an economically disadvantaged client to pay court costs and expenses of litigation on behalf of such a client without the need for the client to remain obligated to repay these costs. RPC 1.8(e)(2) is adopted from the Model RPCs and is a significant step toward reducing access to justice barriers for low income persons in Washington. The current rule, which requires a low income client to remain ultimately liable for repayment of costs paid by a lawyer or legal services program, even when the services themselves are free to

the client, creates a substantial burden for clients and lawyers when undertaking representation. Because clients must be informed that they are required to repay costs, they can be reluctant to authorize expenditures needed to competently carry forward a case, even if the cost is to be advanced. Further, the reduction in the administrative burden of billing clients and attempting to collect these costs will create great efficiencies in the indigent legal services delivery system and thus improve access to justice. Therefore, the ATJ Board strongly urges adoption of RPC 1.8(e)(2) as proposed.

- **RPC 1.8(g):** The proposed language of 1.8(g) retains the current ability of lawyers to undertake multi-party representation and settlement of multi-party claims or defenses with the informed consent of all clients *confirmed in writing*. This differs from the Model Rule version of 1.8(g), which would require the informed consent of all clients to settlement terms to be in a writing “signed by the client.” This would be a significant change and would have adverse impact on representation of certain transient client groups who tend to be low income and have little access to legal services, including homeless persons and migrant farm workers. These groups are often difficult to quickly communicate with in writing due to the lack of a readily accessible fixed mailing address, fax machine, or email, the need for translation of written documents into languages other than English, illiteracy, the presence of a disabling condition, or other circumstances that impair easy written communication. The ability to orally communicate terms and conditions of settlement and obtain the client’s oral informed consent subject to timely written confirmation enables unimpaired ability to settle claims and defenses in furtherance of access to the justice system. A signed informed consent requirement would effectively negate settlement ability for multi-party cases involving transient populations. Thus, the ATJ Board strongly urges adoption of RPC 1.8(g) as proposed.

RPC 1.15A: Safeguarding of Client Property

While the ATJ Board expresses no particular interest in the proposed changes reflected in RPC 1.15A, the Board strongly endorses those provisions of the rule which address and clarify the duty to maintain funds in trust accounts and in particular the duties related to IOLTA accounts. The ATJ Board agrees that there is a need for clarification of the trust account requirements and that the proposed changes provide appropriate guidance.

RPC 6.1: Pro Bono Publico

The ATJ Board suggests substituting the following Comment [3], which the ATJ Board believes provides a more complete, detailed and focused definition of the types of legal services that qualify as pro bono publico services under paragraphs (a)(1) and (a)(2).

[3] [Washington revision] Legal services within the scope of paragraph (a)(1) are those provided to individual clients: (a) referred by a qualified legal services provider (as defined in Washington Comment [14]), or (b) who attend a free legal clinic or similar program offering free legal advice and/or services, hosted by an organization that provides or coordinates free legal services, or (c) whose incomes and financial resources are such that they are fairly considered to be persons of limited means and cannot afford legal counsel.

Legal services within the scope of paragraph (a)(2) include those rendered to organizations such as homeless shelters, battered women's centers, food pantries, and other not-for-profit organizations that serve persons of limited means. The term "government organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

The ATJ Board fully supports the adoption of the remaining proposed Comments to RPC 6.1.

RPC 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs

The ATJ Board strongly urges adoption of the RPC 6.5 as proposed. This rule was originally adopted by the Court, effective October 29, 2002, specifically to remove barriers to access to justice caused by the unintentional consequences of constructive or imputed conflicts under RPC 1.7 and 1.9. The rule as proposed includes language clarifying that the rule applies only when limited legal services are to be provided without any expectation of a fee from the client. In addition, the new language anticipates adoption of proposed RPC 1.18 (address conflicts arising from prospective clients). As noted in the proposed Comment [6], the rule (as it exists and as proposed) is substantially different from the Model Rule "in order to accommodate the unique civil legal services delivery system, which uses a statewide centralized telephone intake and referral system for low income persons to access free civil legal services." As this rule was crafted to expand access to legal services in Washington, the ATJ Board strongly urges adoption of the rule and related Comment as proposed.

Again, the ATJ Board appreciates the opportunity to submit these comments and remains willing to address any concerns related to the adoption of these specifically referenced rules or any others for which the Court might desire input from the ATJ Board.

Sincerely,



Christine E. Crowell
Chair, Access to Justice Board

cc: C. J. Merritt, Clerk of the Supreme Court
Jan Michels, Executive Director WSBA
Joan Fairbanks, Justice Programs Manager