

Preamble

Bausch, Lisa

From: Doug Ende [douge@wsba.org]
Sent: Friday, March 04, 2005 8:33 AM
To: Bausch, Lisa
Subject: Comment on Proposed RPCs

Variations of the term "zealous advocacy" appear three times in the Preamble to the ABA Model Rules of Professional Conduct: Paragraph [2] ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."); Paragraph [8] ("[W]hen an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done."); Paragraph [9] ("[The basic principles underlying the Rules] include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.").

In the published proposed amendments to the RPCs, it is proposed that that variations on the phrase "conscientious and ardent" be substituted for "zealous" in the three instances cited above. According to supporting WSBA documentation, "Washington has, since the adoption of the RPC in 1985, scrupulously avoided use of such terminology. Owing to its etymology, the word 'zealous' in this context could inappropriately be interpreted to condone extreme or fanatical behavior of a type that would be inconsistent with a lawyer's professional obligations."

It has come to my attention that there is another instance of the word "zeal" in the Model Rules that was not identified by the WSBA Board of Governors when it suggested the above-described substitutions. Specifically, in Comment [1] to Proposed Rule 1.3, the following sentence appears: "A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy on the client's behalf." (Emphasis added.)

For the same reasons that "zeal" was removed from the Preamble, and to ensure reasonably consistent use of terminology throughout the RPCs, I recommend that the words "diligence" and/or "avidity" be substituted for "zeal" in that sentence.

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