

1.6, 1.13, 1.15A(i), 3.3, 6.1, 6.2, 8.3, 8.4(h)

Bausch, Lisa

From: Roger B. Ley [rbley@pacifier.com]
Sent: Friday, March 25, 2005 6:17 PM
To: Bausch, Lisa
Cc: Ethics2003Committee@wsba.org
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INTRODUCTORY:

In the first place, the rules are all unconstitutional because the Supreme Court does not have the authority to act as a legislature in enacting the rules, and then act as a court in interpreting its own rules. This is true of all the rules but most poignantly true of the most unconstitutional rule, RPC 8.4, which purports to punish lawyer for exercise of speech critical of a long list of groups, each and every one of which is properly the subject of vigorous criticism by lawyers.

Secondly, many of these rules cast the lawyer in the role of assistant to the court, or society, or to the supposed public good. A good example is the rule requiring lawyers to be informers not only against each other but also against judges. The role of the lawyer is to protect the client from the courts and the executive branch, nothing more and nothing less. The attempts to weaken lawyers by forcing them to inform on others are wrong and may be unconstitutional. The right to counsel means counsel loyal to the client, not loyal to the crown, and a defendant in a civil case has a similar right to protection by a lawyer from those who would take property, family, privilege and happiness from a defendant.

Third, the rules characterize the bar as self regulating. This is not true. The supreme court is a branch of government and it regulates and punishes lawyers. The WSBA is an administrative agency whose powers come by delegation – improper delegation, but still delegation - from the supreme court. This system is not self-regulation.

Fourth, the courteous lawyer model has its place, but it should not be written into the rules. The law profession is a profession of hurting people by taking their money or their freedom. Sometimes lawyers even destroy peoples' lives and businesses. Hostility is inevitable. Lawyers should be free to criticize judges, lawyers, witnesses and anyone else in the court system as much as they please, and in any way they please.

Finally, the proposed rules are too long. They may be derived from the ABA, but the ABA is a lobbying group primarily affiliated with the Democratic party, and has no claim to authority on this or any other issue. There are 240 pages of material, and not all lawyers even have a printed copy. Lawyers should not be asked to analyze and cross reference all this material, in their own time, when bar lawyers can study it at public expense.

Specific rules:

1. Confidentiality and informing on clients to prevent "fraud." This rule compromises the loyalty and independence of an attorney by compromising the attorney client privilege. One of the cornerstones of justice is the ability of the client to confide without fear in an attorney. The client must confide if the lawyer is to protect the client from the court. If the client knows that the lawyer might inform on her in order to protect himself, then the client will withhold information. The client will not be able to get access to justice. It may be nice to have someone be whistleblower, but the job of a lawyer is to protect the client from the government, not to be an inside source of information. Obviously phrases such as

fraud are vague, and phrases toxic waste imply that the lawyer is supposed to be an inside agent for supposed environmental qui tams or even for the EPA. Many lawyers would fear prosecution, disbarment, or civil suit if they don't talk, so would be strongly motivated to sacrifice their client. Or, lawyers would refuse to represent anyone who might make a toxic discharge (ie American industry) which would tend to deny industry access to justice. It may be that the underlying purpose of this rule is to get corporate lawyers to betray their clients by turning over information to class action lawyers, or perhaps the purpose is merely to frighten corporate lawyers so they will not resist class actions cases, some of which may involve billions of dollars.

1.13 Informing to the Board. Again, it is not necessary for the bar to control internal operation of corporate lawyers. Corporations are quite able to define the duties of their lawyers. Acting in the best interest of the corporation means that the lawyer abandons the relationship of fidelity he is supposed to have, and becomes an executive, without appointment by anyone, or, most likely, an informant to someone else. This proposal deprives corporations of access to justice.

1.15A(2) 1.14- IOLTA. IOLTA is a tax imposed by the supreme court to provide millions of dollars to Columbia Legal Services, which is at the very least a close friend of the Democratic party. Columbia is disguised behind the LFW. The court does not have authority to impose taxes on banks, which is what this is, nor is it proper to fund a law firm which appears in the supreme court and in other courts. This is a conflict of interest which cannot be resolved without rescinding "IOLTA." The supreme court did rule that IOLTA is not a taking, but the issues raised here were not considered by the Supreme court.

3.3 33 CANDOR. Lawyers are not supposed to offer evidence they know to be false. This is another example of enlisting the lawyer as an assistant for the court. In fact, only courts may judge clients. Lawyers may not do that. For that reason, a lawyer may not refuse to offer the client's evidence no matter how obviously untrue it is, because the lawyer may not sit in judgment of the client. It is for this reason that lawyers persist in defense of offenders such as murderers whose guilt is obvious to all.

It is probably fair to say that perhaps half the evidence offered in criminal cases is false, and the lawyers know it. Lawyers cannot have the responsibility and authority to tell clients what defenses they can have, and what they cannot have. The rules would of course require prosecutors and codefendant lawyers to inform on lawyers who bravely put on questionable testimony, and this will put an end to any form of collegial criminal justice as contemplated in the prologue to these rules. It would really mean that the prosecutor, defense and perhaps the court as a group would decide on the guilt of the client. A jury would not be necessary because the client wouldn't be able to offer the evidence wanted. This is equally true in civil cases, but less obvious.

This comment does not suggest that a lawyer may conspire with the client, or put on testimony the client says is false.

6.1 Assistance to charitable and religious and community groups. A court must be neutral and detached in all matters. The court cannot endorse or support supposed charitable and religious groups because there is nothing whatsoever neutral and detached about such groups. Most are allied with the Democratic party, and hostile to Republicans. Many lawyers and citizens disagree about allowing such groups to interfere in litigation, or disagree that they should be able to bring their own litigation to control public policy. And, many citizens disagree as to any particular policy towards people of low income. The supreme court may have to rule on these issues, such as the standing of supposed charities to be heard in court, and the court must not endorse such groups before the fact, because that would compromise the neutrality and detachment the court must have in ruling on any issue affecting supposed charities. This is exactly the same as one of the reasons why the supreme court cannot subsidize a law firm, Columbia legal services, by giving them money through the IOLTA program.

6.2 Lawyers accepting cases. This rule and others imply but do not yet say that lawyers can and should be forced to work for free for clients whom the court believes deserve attorneys. Forcing a lawyer to work for free is a violation of the due process and taking clauses, because neither a court nor anyone else in this country can force a person to work for free. Lawyers do not waive their

constitutional rights by being licensed as lawyers, and the court once again cannot identify and support certain people or causes by forcing lawyers to work for free for them. Furthermore, lawyers should be free to decide for themselves what causes or indigent clients they may wish to represent, according to their own personal ideology and interests.

8.3 Informing on lawyers. This amazing rule would require lawyers to turn in every other lawyer who might be lacking in "honesty, trustworthiness or fitness". For the prudent lawyer afraid of her own bar complaint, this would mean any offense is substantial and it would mean informing on any lawyer who committed any bar offense, for fear of being informed on herself. This would end any pretense of courtesy and collegiality that lawyers are entitled to create for their practice. It would create a chilly atmosphere in the smaller towns of this state, where most of the lawyers would be filing bar complaints against each other. But the unethical and institutionally wrong aspect of this is that the lawyer would have to inform on other lawyers, and judges, which would frequently mean lawyers in an ongoing case. That would be disloyal to the client because the duty of a lawyer is to help the client, rather than to help the bar find people to prosecute. The lawyer would face a conflict. If she says nothing, the case can be controlled or managed or settled. If a bar complaint is filed, prospects of settlement are gone. The client is burned. And, of course, some judges would resent bar complaints, and would hold it against lawyers who file them. IT would also be interesting to see how many lawyers would file bar complaints against federal judges, and for that matter, judges of the supreme court.

8.4 No criticism of gays, socioeconomic status and other groups. Lawyers work by speech. This rule, (h) the most unconstitutional of all these rules, proposes to threaten and punish lawyers for criticism of gays, people of economic status, and many others. The first amendment and the state constitution afford lawyers freedom of speech in criticizing gays and any other group in any robust way, without limit. The rule is unconstitutional. The sixth amendment right to counsel and the due process clause enable people to have lawyers to defend them, from courts, and that right implies the right to full and robust discussion of race, religion, and any other issue lawyer and client find appropriate. Besides everything else, lawyers are entitled to conduct uninhibited discussions with their clients during voir dire and trial, about various socioeconomic and religious and sexual groups jurors might be in, without fear of being disbarred because of a complaint from the client, a codefendant, or the court itself.

It is obvious that the purpose of the rule is to intimidate, disable and drive out lawyers who defend those who oppose the groups endorsed by the court. For example, lawyers would fear to defend a parent who wants to prevent a gay parent from gaining custody. There is too much risk of getting disbarred for saying the wrong thing in a world where the opposing lawyer is *required* to file a bar complaint. Lawyers would fear to defend employment cases and other group litigation cases pitting one supposed group against others for fear of similarly getting a bar complaint, and at best, spending an agonizing year defending a bar complaint, and at worst, being suspended or even disbarred for saying the wrong thing. Lawyers are American citizens, and they are entitled to have any opinion they want about the groups referred to: it is not a crime to say and believe that it is wrong to be gay. This rule punishes lawyers for having opinions and for practicing law in a manner that supports their opinions. Ubi justitia?

Conclusion. These rules should never be adopted. Legal rules for lawyer discipline should be promulgated by the attorney general or some agency outside the judiciary. The rules should emphasize the duty of the lawyer to the client.

Roger Ley 1379
8811 28th avenue nw
Seattle, WA 98117