

Bausch, Lisa

From: PNL [PNL@LuveraLawFirm.com]
Sent: Saturday, February 05, 2005 11:39 AM
To: Bausch, Lisa
Subject: Proposed Rules of Court

I am sending this communication in response to the invitation for comments on the new Rules of Court.

1. Comment [20] in the Preamble to the rules says a violation of the rules should not itself give rise to a cause of action against a lawyer nor create a presumption in such a case that a legal duty has been breached. That seems to me to be nothing more than legal hypocrisy. First of all, if violations of these rules can be grounds for disbarment then why wouldn't they be evidence of professional negligence and sub standard legal care as well? Second, when other professionals are sued for professional negligence, violations of their rules are admissible and relevant. If we are self governing professionals, why should we carve out a protection like this for lawyers which is not provided to other professions when sued for professional negligence?

2. Rule 1.1 deals with professional competence. Comment [2] says "a lawyer need not necessarily have special training or prior experience to handle legal problems of type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience." That is a broad generalization of an untrue statement almost one hundred percent of the time. To suggest the lawyer just passing the bar examination is as qualified as one with years of experience is a silly idea to incorporate in court rules. Worse, one of the problems with our profession is that anyone with a license is permitted to do virtually any legal work without a prior showing of qualification other than a law license. This is true even if the print on the license hasn't had time to dry yet. We should be encouraging requirements of a showing of qualifications to do legal work beyond passing the bar in many areas of legal practice rather than putting language like this into our court rules.

3. Rule 1.5 deals with fees.

(1) Comment [3] discussing fees including contingent fees, says that in the application of this rule a lawyer must consider such factors as "a ceiling on the percentage allowable or may require a lawyer to offer clients an alternative basis for the fee." This would suggest a requirement that a lawyer offer a client an alternative to a contingent fee arrangement. I think that is an unreasonable limitation on the lawyer. If the contingent fee offered is reasonable in amount the lawyer should be entitled to decline to take a case on any other fee basis. It ought to be the option of the lawyer provided the contingent fee is reasonable in amount. No lawyer should be obligated to take a case they don't want nor to take a case on a fee basis they do not agree with. This language should be revised.

(2) The comments in [7] regarding division of fee impose the restriction that there can be no division except as to proportion of services rendered or responsibility. The common practice elsewhere and often in this state is to pay referral fees irrespective of these factors. We should re-examine this issue. Consideration should be given to permitting payment of referral fees between lawyers irrespective of the work done provided the client is fully advised and consents and the total fee charged meets the reasonableness test.

4. Rule 7.4 says one may not state or imply that they are a specialist in a particular field of law unless they have a "certificate, award or recognition by a group" that they may use "certified, specialist or

expert." The rule provides no criteria for the "group" that issues the certificate, award or recognition." Any mail order diploma mill will do under this rule. It's like the wizard in The Wizard of Oz giving the scarecrow a diploma. If the rule permits this exception it should have reasonably strict standards for the group giving the certificate.

Paul N. Luvera Bar No. 849 (206) 467 6090