

FILED
April 26, 2005
SUPREME COURT
STATE OF WASHINGTON

2005 APR 29 P 4: 10

BY C.J. MERRITT

CLERK

Lisa Bausch
PO Box 40929
Olympia WA 98504-0929

RE: Proposed Rules of Court

Dear Ms. Bausch:

This letter is to comment regarding the proposed changes to the Rules of Professional Conduct pursuant to the work of the Ethics 2003 Committee. My comments do not reflect the views of any law firm or employer. They are my personal opinions, submitted as a concerned attorney and member of the Washington State Bar Association.

General Comments:

- 1) Length - The present RPC are only 15 pages in length. The proposed RPC are 184 pages in length, including official comments. The proposed RPC with comments are unduly long and tedious.
- 2) Official Comments - The official comments are too long; they virtually swallow the rules. No one will have time to read them. The comments should be eliminated.
- 3) Titles - The proposed RPC eliminate the titles. However, the titles are necessary for clarity. The present grouping into eight titles allows for easy location of specific areas of lawyer conduct. The titles should be retained.
- 4) Substitution of Terms - The proposed RPC substitute the terms "conscientious and ardent" for "zealous." The term "zealous" should be retained. It implies a strong belief in one's client and a rigor in representation which cannot be matched by the new terms. Our system is adversarial, and many times it must be so in order to achieve a just outcome, particularly in criminal cases. Lawyering is not a tea party.
- 5) State's Identity - The present RPC have served Washington bench and bar well for years. Although Washington's RPC originated from the ABA model, Washington is not an adjunct of the ABA. Washington should retain its individual identity and continue the tradition of federalism upon which this country is founded. Uniformity for uniformity's sake is not good; it only destroys state's rights. There is no more reason for Washington to adopt ABA rules than there is for Washington to adopt Oregon rules. We should retain the rules we have and improve them in specific areas as needed. The ABA rules should be rejected in their entirety.
- 6) Time Allowed for Comment - The Ethics 2000 Committee, appointed in 2003, worked on these proposals for one year, then issued a report in March 2004. Most lawyers do not even

know this committee exists, let alone know about the proposals. Busy practitioners do not have time to digest massive changes such as these proposals, yet these proposals could greatly impact their practices. The time for comment should be extended another year, and the "Bar News" should publish the proposals piecemeal. That is the only fair and meaningful way to obtain comment.

Comments Regarding Specific Proposed RPC:

1) RPC 3.1 (Meritorious Claims and Contentions) - This rule is viewed by many as a gag order. It is used by more powerful attorneys to attack pro se litigants and attorneys who represent the less powerful, the underdog, and political minorities. The addition of "law and fact" only makes it worse. The law may be totally wrong and immoral; yet this rule makes it harder to take a moral stand when the law is wrong. Further, parties on opposite sides of an issue routinely contend that the opposing party has advanced a "frivolous" claim. In fact, many firms utilize this rule to threaten CR 11 sanctions against the opposition and derail the opposition's case. RPC 3.1 should be abolished in its entirety and, if not, then the new language, "law and fact" should be rejected.

2) RPC 8.2 (Judicial and Legal Officials) - Section (a) chills the First Amendment right of a lawyer to support for judicial office a candidate who has not been found "qualified" by the various associations that rate candidates. It should be removed. Section (c) has properly been removed by the committee; it should also be removed from the comments.

3) RPC 8.4 (g) and (h) (Misconduct) - These provisions are overly broad, overly subjective, and confusing. They should be abolished. At a minimum, the proposed phrase "or socioeconomic status" should be rejected. This phrase further confuses an already muddled provision.

I appreciate your consideration of my suggestions. Please feel free to contact me for clarification or further input.

Sincerely,

Patricia M. Michl
WSBA # 17058

18024 17th St East
Sumner WA 98390
(253) 798-3640 (w)