



1.8(e), 1.14, 1.15A

6.1

John Midgley, Director

April 29, 2005

Chief Justice Gerry Alexander and Honorable
Associate Justices of the Washington Supreme Court
Supreme Court of Washington
Temple of Justice
Olympia, WA 98504

Re: Comments to Proposed Changes to Rules of Professional Responsibility

Dear Chief Justice and Hon. Associate Justices:

Columbia Legal Services (CLS) provides civil legal services to low-income clients throughout the State of Washington. CLS would appreciate consideration of our comments below regarding the proposed changes to the Rules of Professional Responsibility (RPC's) that are currently being considered by the Court.

In submitting these comments, CLS in general applauds and supports the extensive work of the WSBA's Special Committee for the Evaluation of the Rules of Professional Conduct (Ethics 2003 Committee) and the careful review of the proposals undertaken by the WSBA Board of Governors in submitting the proposed changes to the Court. Subject to the comments below, CLS urges the Court to adopt the rules and related commentary as currently proposed. CLS's comments below are limited to specific provisions that have particular impact on low-income clients.

CLS also supports the written comments separately made by the Access To Justice Board. We have not repeated below comments on every aspect of the proposed rules covered in the ATJ Board's letter, but we have addressed in more detail some of the rules discussed in that letter in addition to commenting on some additional rules.

1. Proposed Rules Addressing Barriers To Legal Advice And Representation For Low-Income Clients

CLS strongly endorses several proposed rules that would provide protections for all clients but would also address barriers that have impaired full participation and access to the legal system for our low-income and disabled clients. These proposed rules involve informed consent of

clients. As one compelling example, CLS has represented many migrant workers in cases regarding payment of wages. We work very hard to stay in close contact with our clients in these cases, but the clients often disperse to different states and sometimes different countries as the cases develop. In order to timely respond to developments in these cases, especially time-limited settlement offers, the ability to obtain informed consent from clients by telephone and then confirm in writing is essential. Without retention of provisions allowing this, our ability to obtain reasonable settlement of legitimate claims and otherwise dispose of cases in an efficient and fair manner would be greatly compromised.

Proposed RPC 1.8(e)(2) would clearly allow lawyers to pay litigation costs for indigent clients so long as there is no expectation of a fee from the client. CLS strongly urges adoption of this rule. In the great majority of cases, indigent clients are in no position to pay for substantial litigation costs, and an understanding that they are ultimately responsible for such costs can be a substantial deterrent to seeking justice. Further, in many cases outside of the class action context, low-income persons need assistance with litigation costs in order to seek nonpecuniary remedies that will benefit many persons in addition to the individual client. These include cases to vindicate rights in education, health care, public housing, social services, and employment. The rules should reflect the reality that indigent clients need assistance with payment of litigation costs in order to obtain access to justice.

CLS also strongly endorses retention and in some cases expansion of rules that would prevent many contacts with low-income clients and prospective clients from becoming broadly disqualifying in the conflicts arena. These include proposed RPC's 1.10(e) (screening for lawyer new to firm to prevent firm from being conflicted); 1.18 (communications with most prospective clients does not create conflicts, screening also available); and 6.5 (no conflict created in limited legal services context where there is no expectation of a fee). Also relevant to these considerations are the definitions and commentary thereto in the "Terminology" section regarding the terms "Informed Consent" and "Screening."

Access to legal assistance is a critical need for low-income people. As the members of the Supreme Court well know, the recent Legal Needs Study showed that about 85% of the legal needs of the poor are not being addressed. All of the rules limiting unnecessarily broad reading of the conflict of interest rules will increase access to legal advice and counsel for low-income people who would otherwise be "conflicted out." We at CLS believe that the ethical rules should be strictly adhered to, but also that the rules should be drafted to enhance access to professional legal advice and representation where this is possible without compromising ethical requirements. The rules identified in the preceding paragraph will help us immensely in that they clarify that in many instances in which cautious lawyers might previously have felt they had

CLS also strongly supports the proposed rules on limited representation because these rules as well support more access for low-income people without compromising ethical requirements. These include proposed RPC's 1.2 and its comments (allowing limitations on scope of representation and explaining when and how) and 1.4 and its comments (requiring clear consultation with clients about any relevant limitation on the lawyer's conduct). Also relevant here with respect to protecting clients who may have only limited representation is proposed RPC 4.3 and its comments (limiting communications with unrepresented persons). All of these rules should be adopted, including retaining proposed existing provisions and commentary. Without limited representation, which of course has been allowed and refined through the rules in recent years, many low-income people would not receive the representation at critical stages of their cases that many receive now, from both staffed legal services providers and private attorneys recruited through local bar associations' private attorney involvement programs. These rules have allowed and should continue to allow busy attorneys to make a real difference in the lives of low-income people without having to commit to the entirety of lengthy litigation.

2. Clients With Diminished Capacity

CLS supports adoption of the proposed RPC 1.14 and its accompanying commentary regarding clients with diminished capacity. We and our partners deal with many clients with these challenges, and the proposed amendments and commentary would assist all of us greatly in making the difficult choices lawyers must make in these situations.

3. Trust Account Rules

CLS supports the proposed changes to the RPC's regarding client funds. The clear instructions in proposed RPC 1.15A, telling lawyers more precisely how to treat client funds, are helpful to all lawyers. CLS, as a recipient of funds that come from interest on small amounts of client funds held in trust (IOLTA funds), particularly supports Comment 15 to this rule. Comment 15 makes clear that lawyers cannot receive any credits or benefits from banks based on trust account balances. This comment is important because it means that banks will correctly and fairly handle IOLTA interest, and this should therefore lead to additional interest resulting from IOLTA accounts. Every increase in IOLTA interest will increase the amount of money available for civil legal aid for low-income persons, and so retention of this clear Comment is especially important.

4. Pro Bono Publico

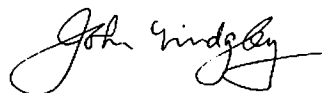
On behalf of CLS, I must express disagreement with the proposed RPC 6.1, which would

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current 30-hour goal is the image and the reality that Washington lawyers want to project regarding pro bono service.

We at CLS very much appreciate your consideration of our comments.

Very truly yours,

A handwritten signature in cursive script that reads "John Midgley". The signature is fluid and includes a long horizontal flourish at the end.

John Midgley
Director