

Preamble, 5.8, 6.1, 8.4(h)

Bausch, Lisa

From: theo@vjbm.com
Sent: Wednesday, February 09, 2005 12:01 PM
To: Bausch, Lisa
Subject: Proposed Changes to the RPCs

Ms. Bausch,

I am a Washington attorney. Please consider the following comments regarding the proposed changes to the RPCs.

1. Regarding the preface section (formerly the preamble), I believe it is essential to our justice system that attorneys be able to freely exercise their free speech rights regarding individual judges who fail to perform their duties in an adequate manner. I have clients from time to time who are dealt an injustice at the hands of a poor judge. Such clients occasionally insist that I should let the public know about the inadequacies of his/her performance. While I wish to express myself, however, I feel constrained from so informing the public who then would be better educated the next time such judge is up for election.

It is imperative, therefore, that the preface include comments explaining that attorneys are free to exercise their free speech rights and express their opinions regarding the competency of individual judges so long as a case is closed. Our judicial system and society would be well served if the public hears from those who practice before the courts and are in perhaps the best position to gauge the quality of the judges. Committee endorsements are a poor substitute. People are voting for judges in the dark.

2. The amendments to Rule 5.8(b) should include a knowledge condition. It is possible that a lawyer would not know another attorney is disbarred or suspended and could unwittingly be in violation of the rule. It should include that the lawyer should not "knowingly" engage in such conduct.

3. Rule 6.1 should be revised to allow attorneys who provide pro bono service to remain anonymous and not receive a "recognition award." One of the joys of serving others is to do so without having public recognition therefor. While I do not mind providing this info to the WSBA for its recordkeeping and PR purposes, I prefer to keep my good deeds to myself and don't believe it should be mandatory that they be published for all the world to know.

4. The existing and proposed versions of Rule 8.4(h) are subject to very subjective application. One cannot objectively and fairly determine whether a reasonable person would interpret certain conduct as manifesting prejudice or bias against another on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, marital status or socioeconomic status.

For example, I have had older attorneys speak down to me in court, obviously touting their own age and experience (I have "only" practiced 16 years). They are engaging in conduct that arguably violates this rule (age). If I wear shoes with holes in the bottom of my soles and opposing counsel makes a snide comment about them, she is violating this rule (socioeconomic). If an attorney argues that an opposing party is financially unsound and that the court should afford his client additional protections as a result, such attorney is violating this rule (socioeconomic). The possibilities are limitless.

Rule 8.4 should be deleted in its entirety. Attorneys who are not civil are their own worst enemies and such a subjective rule will not alter their conduct.

Thank you for considering my comments.

2/9/2005

W. Theodore Vander Wel