

1.15A(h), 8.3

# MARK C. WAGNER

Attorney at Law

Tacoma: (253) 460-3265  
Toll Free: 1-888-279-2002  
FAX: (253) 460-6842  
E-Mail: [mark@markcwagner.com](mailto:mark@markcwagner.com)

6512 - 20<sup>th</sup> St. Ct. W., Ste. A  
P.O. Box 65170  
Tacoma, WA 98464-1170  
[www.markcwagner.com](http://www.markcwagner.com)

April 25, 2005

Clerk of the Supreme Court  
Washington State Supreme Court  
P. O. Box 40929  
Olympia, WA 98504-0929

RE: Comments RE: Suggested Amendments to Rules of Professional Conduct

Dear Clerk and Honorable Justices:

Thank you for accepting and seriously considering comments from attorneys with regard to the suggested amendments to the Rules of Professional Conduct. Most significantly, I must comment on the following proposed changes:

1.15A(h)(9): "Only a lawyer admitted to practice law may be an authorized signatory on the [trust] account." In an L & I solo practice lawfirm such as mine, this is an impossible, unduly burdensome, and prejudicial suggestion. A workers' compensation law practice processes Trust Account checks for time loss almost every single day. Many of my clients are impoverished and economically fragile, and live hand-to-mouth waiting for those time loss checks.

Requiring my signature on each Trust Account check for these clients makes taking a day off -- let alone a vacation -- impossible. More critically, of course, clients and their dependents would be negatively impacted (and in some instances irreparably harmed) if I became ill, or if I had any family emergencies or deaths in my family. In the event of my own incapacitation or death, client funds would be inaccessible indefinitely. It is a disservice to the clients and frankly irresponsible to make them financially dependent on me and me alone. It is unfair to place this disproportionate and mind-boggling burden on the solo practitioner.

Furthermore, the methods attorneys in my situation would need to employ for emergency contingencies, such as leaving numerous blank and signed checks available for staff to process, or creating a signature stamp, would create too much potential for mischief, again possibly negatively impacting client receipt of funds and property due to them, and in stark contrast with the intent of Rules for Professional Conduct. This proposed change will almost certainly prevent consistent and uniform prompt payment to the client of his or her property, as otherwise demanded by justice and the Rules themselves.

RECEIVED  
APR 26 2005  
CLERK OF THE SUPREME COURT  
OLYMPIA, WA

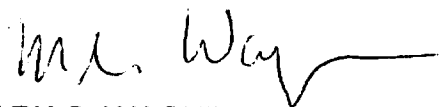
8.3(a): "A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority." The prior application of this Rule of Professional conduct was "should promptly" inform, rather than "shall", and I believe that standard was sufficient for self-regulation by members of the profession. Although another proposed modification of this rule – the distinction of an attorney "who knows" from an attorney "having knowledge" – requires more certainty from an informing attorney, the necessity of reporting something "known" or being in violation oneself places, in theory, a burden of investigation on individual attorneys with *some* knowledge or even suspicion of misconduct -- *prior* to reporting for investigative purposes.

It cannot seriously be the intent of the Court to encourage attorneys to spend time and energy in investigating one another, and those sorts of dynamics between counsel can only have a negative impact on the practice of law. There is not enough discretion in mandatory reporting, and too much in what individual attorneys might "know" about another. While it is possible that certain attorneys might misuse the reporting process for unethical and strategic reasons, the most distasteful and disquieting aspect of this suggested amendment is that it has the feeling -- and potential of becoming -- a large-scale "purge" of attorneys whose methods may not conform with practice norms or trends on any given time and day.

\*\*\*\*\*

Again, thank you for your attention to my concerns. It is apparent that the proposed amendments were time-consuming and well-intentioned, and I appreciate your attention to them.

Very Truly Yours,



MARK C. WAGNER  
Attorney at Law

MCW:MP  
Enclosures