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FILED
 SUPREME COURT
 STATE OF WASHINGTON
 2005 MAY 18 P 12:01
 BY C.J. MERRITT

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May 17, 2005

The Honorable Gerry L. Alexander
 Chief Justice
 Washington Supreme Court
 Temple of Justice
 P.O. Box 40929
 Olympia, WA. 98504-0929

The Honorable Charles W. Johnson
 Washington Supreme Court
 Temple of Justice
 P.O. Box 40929
 Olympia, WA. 98504-0929

Re: Comments to Recently Proposed RPC 1.5

Dear Justice Alexander and Justice Johnson:

This follows my telephone discussion of May 17, 2005 with Justice Alexander. First let me apologize for the lateness of this request that the Court reserve action on a portion of Comment [3] to proposed Rule of Professional Conduct 1.5. We stand strongly behind the proposed rule and comment as submitted, with the exception of the final two sentences and the concluding cross-reference, which we request and suggest be reserved until such time as the ramifications of those provisions can be thoroughly analyzed.

Comment [3] was taken verbatim from its counterpart in the ABA Model Rules, with WSBA's only modification being the scrivener's addition of the cross-reference to RCW 4.24.005. The comment was not otherwise flagged for discussion by the Ethics 2003 Committee, nor was it substantively debated by the Board of Governors. The implications of Comment [3], considering the state of Washington law relating to limits on attorney fees, were not recognized until this week.

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Comment [3] may be misleading in implying, or being subject to interpretation that current Washington law supports fee caps outside of the context of worker's compensation law (where fees are regulated as part of the comprehensive statutory framework). The general references to "applicable law" and "a ceiling on the percentage allowable" could erroneously be read to recognize or authorize fee caps or limitations in areas where Washington has not done so.

Comment [3] is otherwise an accurate and useful gloss on the meaning of Rule 1.5. Reservation of the language in question will not alter the proper scope of the Comment or affect the guidance it will provide to practitioners.

At this time we ask that the Court reserve action on the final two sentences and the concluding cross-reference until the issues can be more fully debated.

A redlined version of Comment [3], revised as described in this letter, is enclosed.

Thank you for your consideration of this matter.

Sincerely,



Ronald R. Ward

RRW:

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Attachments: Proposed Rule 1.5 and Comment
Comment [3] revised and redlined

[3] ~~Washington revision~~ Reserved in part. Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. ~~Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters. See, e.g., RCW 4.24.005.~~