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April 24, 2008

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

Re: Proposed RPC's Re Attorney's Fees

Dear Supreme Court:

I am writing to urge the Supreme Court to reject adoption of the proposed new RPC's regarding attorney's fees and trust accounts: Proposed RPC 1.5(f) and RPC 1.15A(c).

This "solution in search of a problem" is unnecessary and an unprecedented intrusion into the business operations of practicing attorneys. Not to mention highly insulting and demeaning.

A copy of my letter to the editor from the March Bar News regarding these proposals is enclosed, plus a copy of an article I wrote and posted on my website: www.RealFamilyLaw.com, about this issue.

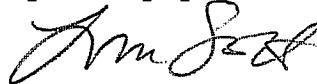
I urge the Supreme Court to reject these new rules. I would have no problem with a few simple rules having to do with fees:

1. Attorneys must refund unused fees, period.
2. Any advance retainer must be reasonable. For example, for beginning a contested family law matter a retainer of 20-25 hours of the attorney's time would be reasonable. A trial retainer would be substantially more, but reasonably based on the estimated time.
3. A flat fee must be reasonable. If not substantially expended, the attorney must refund the unused portion.

These rules would be much better, simpler, and less intrusive than the rules currently proposed.

Thank you for your consideration.

Very truly yours,



Lisa D. Scott

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Bar News welcomes letters from readers. We do not run letters that have been printed in, or are pending before, other legal publications with overlapping readership. Letters must be 250 words in length or less, and e-mailed to letterstotheeditor@wsba.org or mailed to: WSBA, Attn. Letters to the Editor, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539. Bar News reserves the right to edit letters. Bar News does not print anonymous letters, or more than one submission per month from the same contributor.

TARRTF and feathered?

Due to the misdeeds of a few bad apples who took money from clients and ran off, or inconsiderately upped and died before the work was done, the RPCs on retainers are being revised (February 2008 *Bar News*). TARRTF apparently stands for: Too bad, Attorneys are Rarely Responsible enough to be Trusted with Funds, and convened under the "Micromanagement of Lawyers Campaign" by the Board of Governors (BOG); Motto: "How can we BOG down overworked attorneys this week?"

The proposed rules are inherently illogical. You can charge an "availability retainer" and do nothing, but you can't get paid first for hourly fees. I find it highly demeaning and insulting to be told that I am too dishonest or incompetent to accept advance fees. In 20 years of practice I have never hesitated to refund unused fees. Thanks, BOG, for confirming the public's worst suspicions about lawyers.

I will have to raise my rates to cover the increased administrative costs associated with these convoluted rules. Thanks, BOG, for forcing me to take more time away from my clients so I can stay out of trouble with the trust account police.

By the way, now that the problem has been solved, will the Bar stop charging us that \$15 annual assessment to cover the misdeeds of the bad apples?

An article-length version of this letter, including a mock schedule of flat fees in family law cases, can be found at my website www.RealFamilyLaw.com under "Real Law Practice."

Lisa Scott, Bellevue

Briefly

Now that the Supreme Court, by a 7-2

majority in *King v. King*, has followed other states and determined there is no constitutional right to a lawyer at taxpayers' expense in a dissolution proceeding, maybe the Bar Association will think twice before again committing our resources to filing an amicus brief on an issue unsupported by precedent and that the membership is divided on.

Charlie Blackman, Everett

WSBA PRESIDENT STAN BASTIAN RESPONDS: *The WSBA has a long-standing commitment to issues involving access to justice and the unmet legal needs of persons with limited or moderate income. In King, WSBA members serving on the Amicus Brief Committee unanimously approved filing an amicus brief to discuss the vital role lawyers play in assuring all parties have meaningful access to the courts, and preserving limited judicial resources. The WSBA was well served by Monty Gray, who volunteered his time in drafting the WSBA brief. Mr. Gray practices at Davis, Wright, Tremaine LLP.*

Objection to objection

Regarding the comments by Andy Hess in the January issue to comments by Jeanette Burrage in the December issue under the subject heading "Legislating morals," I do not know either of them, but I find Mr. Hess' comments unsupported by any substantial evidence, scientific or

otherwise. Mr. Hess' questionable opinion is just as objectionable as he finds Ms. Burrage's "assumption" to be "baseless" on the subject of the morality of sexual orientation. His opinion that the American Medical Association, the American Psychiatric Association, and the American Psychological Association are "reputable" on this issue because in his words, they "consider sexual orientation to be a legitimate part of who one is — not a moral choice," and his last comment that sexual orientation (as compared to sex itself) "is a result of birth," suffer from apparent bias and lack of objective evaluation.

Some thoughtful information about the medical and psychological associations' approaches to this subject can be found in a well-researched and referenced book by Anne Hendershott, *The Politics of Deviance*, ©2002.

The WSBA should cease advocating and espousing questionable political and/or moral positions, period! Disguising such as appropriate legal discussion in a law journal in order to advocate such positions, especially when significant numbers of its members may not approve of such, is inappropriate, in my view. The WSBA should not spend its members' dues to promote, support, or publish any such positions and should limit its activities to testing, licensing, discipline, and legal education.

David Mickelson, Bellevue

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NEW FEE PROPOSALS CONFIRM: LAWYERS ARE ICKY

*By Lisa Scott, Family Law Attorney
Bellevue, Washington*

Well, it's finally happened. Due to the misdeeds of a few bad apples who took money from clients and ran off, or inconsiderately upped and died before the work was done, the RPC's on retainers and advance fees are being revised. The new fee rules were proposed by a task force called TARRTF, which apparently stands for: Too bad, Attorneys are Rarely Responsible enough to be Trusted with Funds. In conjunction with the new rules, new fee agreement provisions are being mandated, as part of the continuing "Micromanagement of Lawyers Campaign" by the Board of Governors (BOG); Motto: "How can we BOG down overworked attorneys this week?" For example:

ATTORNEY agrees to represent CLIENT in [insert type of case here].
ATTORNEY is too tempted to run off to the Cayman Islands with the money, and cannot be trusted to deposit prepaid fees into ATTORNEY'S own account, so ATTORNEY must deposit said funds into ATTORNEY'S trust account.
ATTORNEY can only draw out funds as they are earned, but no more frequently than once per week, unless ATTORNEY needs to buy multiple daily lattes to help stay awake while working long hours on CLIENT'S case, or for gas money to drive to court every other day responding to opposing counsel's frivolous motions.

The proposed rules are inherently illogical: you can charge an "availability retainer" and do nothing for your pay, but you can't get paid first then do the work if it's prepaid hourly fees. Apparently the average lawyer can't be trusted with advance fee payments, but the average contractor, landscaper or dentist can be. What contractor will start a major remodel without an advance on fees? And last time my dentist constructed a crown for me, he required an up-front fee payment because he can't sell the crown to someone else if I fail to pay up after he's put time and money into the custom work. These business people do not maintain their customers' money in trust accounts.

I find it highly demeaning and insulting to be told, in essence, that I am too dishonest or incompetent to accept fees in advance of the work I have promised the client I will perform.

And what's this deal about an availability retainer? What client will pay an attorney to just sit around doing nothing? Come to think of it, what a great idea. But what if you're not available when the client calls (because you're on the beach in the Caymans). Do you have to give them a refund?

The proposed rules invite operation of the law of unintended consequences. Hourly fees encourage the lawyer to do a thorough job for the client, because we know we will be paid for all our hard work. Working off of a fixed or flat fee encourages lawyers to “phone it in” and minimize the time actually spent on the case. While “access to justice” is a buzzword we are constantly admonished to consider, I can see no other alternative as a family law attorney than to raise my rates to cover the increased administrative costs associated with these convoluted rules. The extra time necessary to deal with trust account deposits and accounting will take time away from the work my clients have hired me to do.

While flat fee advances may be deposited in the attorney’s own account, if there is a dispute about the fees, a refund may be required. If you take a flat fee and underestimate the time needed, too bad, you lose and must eat it, no matter how much more time you spent on the client’s case. Therefore, it will become increasingly crucial for attorneys to accurately estimate the time needed for particular tasks involved in cases, and price them accordingly.

As a family law attorney going on 20 years, I have handled hundreds of cases, both contested and uncontested, flat fee and hourly, many with prepaid retainers for the time estimated for the case or portions of the case. I have never hesitated to refund the unused portion of an “earned upon receipt/non-refundable” retainer. More often than not, in contested family law cases with hourly fees, once the initial retainer is exhausted, it is a matter of chasing after the fees already earned, not refunding unused ones.

While the TARRTF rules are currently only proposals, their adoption may be a foregone conclusion. It is therefore prudent for practitioners to be prepared for this sea change in our daily lives. As an alternative, we can all just quit and go to work at Wal-Mart, or switch to a less stressful and demanding profession, say air-traffic control. In order to head off such a stampede and assist lawyers in setting reasonable fixed fees for various services, I offer the following chart of services and suggested fees. Each individual is of course encouraged to tailor the tasks and fees to his or her own unique situation.

FAMILY LAW ATTORNEY SCHEDULE OF SERVICES AND FEES

Uncontested Divorce – no children	\$1500
Uncontested Divorce – children	\$2000
Contested Divorce – no children	\$10,000
Contested Divorce – children, standard	3 years at UW
Contested Divorce – children, with allegations of	Lexus SUV or

domestic violence or child abuse	BMW 7 Series
Contested Divorce – children, with allegations of domestic violence, child abuse, mental illness, drug abuse and animal abuse	Bellevue condo or suburban rambler
Contested Divorce – opposing party has all attorney’s fees paid by benefactor with unlimited funds	Forget it, you can’t afford it
Deposition – standard	\$750
Deposition – nasty opposing counsel	\$1000
Deposition – client with Clintonian memory loss	\$2500
Settlement Conference – ½ day	\$1500
Settlement Conference – full day	\$3000
Settlement Conference – mediator gives up and leaves, trapping parties and counsel overnight in conference room	\$7500
Pre-Trial Conference – telephone	\$20.00
Pre-Trial Conference – each attempt to get through to courtroom	\$10.00
Pre-Trial Conference – downtown courthouse	\$500 + parking Extra charge if attorney is accosted more than 5 times by aggressive panhandlers on way into courthouse
Pre-Trial Conference – Kent courthouse	\$250. If garage full, \$50 extra per ½ mile attorney must park from courthouse. Discount if attorney stumbles upon sale at Kent Station Mall
Court Appearances	
Scheduled motions	\$750
“Emergency” ex parte hearings:	
24-hour notice	\$1000
2-hour notice	\$1500
2-minute notice	\$2500

Sitting in hallway waiting for hearing to be called	\$5 per minute Discount if client brings snacks
Sitting in courtroom waiting for hearing to be called	\$10 per minute Discount if cases before ours involve juicy allegations, celebrity litigants, or dog, cat, hamster or snake custody
Office Meetings	
Client alone	\$200
Client brings new significant other	\$250
Client brings overbearing relative	\$300
Client brings nosy friend	\$500
Office Meetings	
Regular hours	\$200
After hours	\$300. Discount if client brings donuts
Meetings – Outside Office	
Library	\$200
Starbucks	\$150
Mall food court with Cinnabon,	Free
Home Visit	\$450
Jail Visit	\$750
Hospital Visit	
Client conscious	\$500
Client unconscious from sudden heart attack brought on by being accused of engaging in indecent acts with animals in front of the children	\$1000
Missed scheduled appointment	\$150 cancellation fee
Missed scheduled appointment, due to client being arrested or car vandalized by opposing party	No Charge

Answers to Interrogatories & RFP's	
Standard	\$500
Client drops off unorganized box of random documents dating from the Reagan Administration	\$1500
Quitclaim Deed – urban (Lot 15, Block 20, Lakeview Division No. 4)	\$50
Quitclaim Deed – rural (the NW section of the SW section Of the SE section of Township 24, Range 30)	\$100
Quitclaim Deed – ancient, with intricate legal description containing words like “thence heading northwesterly 20 paces, turn south, twirl around three times and look for the giant granite outcropping inscribed with an X, or a Y, we’re not really sure. Oh, and watch out for voracious cougars, or unpaid attorneys.”	\$500

CAN THIS FREIGHT TRAIN BE STOPPED?

These rules are still only proposals at this point, and must be approved by the Washington State Supreme Court to be adopted. Whether you are a lawyer who believes these rules micromanage you and interfere with your ability to practice law, or a client who feels these rules will interfere with your ability to agree on fee terms with your lawyer, please let your voice be heard. You can send your comments, by regular mail or e-mail, with a copy of or link to this article, to:

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

By e-mail (limit 1500 words):

Camilla.Faulk@courts.wa.gov

Deadline for comments is April 30, 2008