



September 25, 2020

Susan L. Carlson
Clerk of the Supreme Court
Washington Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Re: Comment on proposed changes to RPC 7.3

Dear Madam Clerk:

Please accept the following comments on behalf of Navigate Law Group regarding proposed changes to the Rules of Professional Conduct 7.3 regarding lawyer solicitation.

Navigate Law Group generally supports broadening solicitation rules, but the proposed changes to RPC 7.3 do not go far enough. The rule should be expanded to allow solicitation in all practice areas except in the event of duress or coercion.

The prior proposal to RPC 7.3 in 2018, which would have universally expanded solicitation in all practice areas, was opposed by a number of groups who feared that certain practice areas are more prone to emotional abuse by attorneys trying to solicit business. While well-intended, that fear was misguided, and we now know that access to adequate legal service is more important today than ever before, especially in the proposed excluded practice areas.

Since the proposal to modify RPC 7.3 was amended to satisfy these unwarranted fears of solicitation abuse, Washington and the nation as a whole have been forced to face a harsh reality: the legal industry has failed to serve most legal needs, especially those of communities that do not benefit from traditional social and economic privilege. According to one recent study, "Native Americans and African-Americans not only represent a disproportionately larger share of Washington's low-income population, they also face disproportionately more problems in areas that affect the quality of their daily lives as well as limit future opportunities." Civil Legal Needs Study Update (Civil Legal Needs Study Update Committee, Oct. 2015) at 10.

Citizens and community members are distrustful of law enforcement and the legal system, in part because of incidents like the George Floyd killing, protestors being arrested and incarcerated by non-uniformed law enforcement officers in our hometowns, and perceived and actual failures of the law. As a result, people who have been historically and constantly let down by the legal system have little reason to trust its best representatives: attorneys. This is in part why it is so vital to lift the archaic barriers between the public and attorneys. Direct outreach and trust needs to be built up between communities and lawyers.

Our most powerful weapon to combat distrust is education. Our firm has spearheaded a number of in-person, virtual, and pro bono legal efforts in our community and we have learned that direct contact of community members promotes deeper understanding of the severity of their legal issues. Many people simply do not understand what their legal problems are or what legal support they need. “The vast majority of people face their problems alone. Of those who experienced a civil legal problem, at least 76% do not get the help they need to solve their problems. Sixty-five percent of those who have a civil legal issue do not pursue help at all.” *Id.* at 15.

To make matters worse, they do not trust the people who can provide that help. From our experience, that distrust is due in part to lack of familiarity and connection. We have engaged with community stakeholders, including members of marginalized socio-economic groups, people of color, small business owners, community organizations, and other attorneys. The opinion appears to be universal: RPC 7.3 should be amended to allow direct solicitation in all areas of the law unless such solicitation involves coercion, duress, or harassment.

We are not alone in our efforts. We are proud of the many Washington attorneys who champion access to justice, conducting free legal clinics, engaging in pro bono or reduced-fee representation, or even offering free or low-cost initial consultations, but these programs can only benefit clients who know about and understand them. Our state should encourage entrepreneurial attorneys to find ways to reach all audiences and still make a living.

Promoting these valuable legal resources to community members requires communication, but attorneys are hamstrung by RPC 7.3. Even the proposed rule change does not remedy the problem. For example, the sentence, “[a] lawyer may solicit professional employment in other areas of law from a possible client when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain . . .” (proposed RPC 7.3) seems to imply that it would be unethical for an attorney to directly solicit for *non*-pecuniary programs, such as free legal clinics.

Moreover, it is not clear why criminal law, family law, personal injury law, and bankruptcy law are excluded from the proposal. In our experience, these practice areas are some of the most needed services in communities that traditionally do not get access to legal help. More than 22% of those surveyed for the Civil Legal Needs Study Update indicated having a family related legal problem; 37.6% had a consumer, financial services, and credit related legal problem. *Id.* at 7. Even if those practice areas suffer from increased risk of abuse, the

following proposed restriction on solicitation should be sufficient: solicitation is prohibited when “the lawyer knows or reasonably should know that the physical, emotional, or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer.” Proposed RPC 7.3. To also prohibit particular practice areas from soliciting business is superfluous at best. At worst, it prevents people with real legal problems from learning about available solutions.

Our firm agrees with the comments submitted by the Washington State Bar Association’s Board of Governors regarding proposed RPC 7.3 that there should not be a ban on soliciting clients from enumerated practice areas, whether for pecuniary gain or otherwise.

Embarrassingly, other states have already identified and rectified the problems posed by RPC 7.3 while Washington lags behind. Two years after Oregon simplified RPC 7.3 by restricting solicitation only in the event of duress or coercion, there appears to be no harm to the legal industry or to consumers of legal services.

Access to justice is neither an abstract concept nor a one-time problem; it is an ongoing battle, and Washington should be leading the charge. The time for archaic restrictions on educating our community about legal services is over.

Very truly yours,

Navigate Law Group:

Amber M. Rush
Chelsie M. Elliot
Colin F. McHugh
Eli T. Marchbanks
Tanya M. Green
Brian J. Grambow
Anna K. Russo
James C. Howe
Trevor J. Cartales

Supporting signatories:

Ron Bryan, local business owner
Aaron Williams, local business owner
Carla Huerta, elementary school teacher

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Cc: [Tracy, Mary](#)
Subject: FW: Comments on proposed changes to RPC 7.3
Date: Friday, September 25, 2020 2:36:31 PM
Attachments: [2020.09.25 Letter regarding RPC 7.3.pdf](#)

From: Trevor Cartales [mailto:tcartales@navigatelawgroup.com]
Sent: Friday, September 25, 2020 2:04 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Amber Rush <arush@navigatelawgroup.com>; Colin McHugh <cmchugh@navigatelawgroup.com>; Chelsie Elliott <celliott@navigatelawgroup.com>; Brian Grambow <bgrambow@navigatelawgroup.com>; Anna Russo <arusso@navigatelawgroup.com>; James Howe <jhowe@navigatelawgroup.com>; Tanya Green <tgreen@navigatelawgroup.com>; Eli Marchbanks <emarchbanks@navigatelawgroup.com>
Subject: Comments on proposed changes to RPC 7.3

Dear Madam Clerk,

Please see attached Navigate Law Group's comments on the proposed changes RPC 7.3.
Please let me know if a hard copy is necessary.

Thank you.

--

Trevor J. Cartales
Attorney
WSBA No. 54500 | OSB No. 125204
Tel: (503) 272-7030
Fax: (360) 419-5226
Facebook: <https://www.facebook.com/navigatelawgroup/>
Website: www.navigatelawgroup.com
Address: 1310 Main St., Vancouver, WA 98660

*** CONFIDENTIAL COMMUNICATION *** The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

□



Virus-free. www.avg.com