



April 27, 2021

The Honorable Chief Justice Steven C. Gonzalez  
Washington State Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

RE: CR 71 Proposed Amendments

Dear Chief Justice:

The Washington State Association for Justice (WSAJ) on behalf of its 2,400 members and the thousands of Washington citizens we represent in civil injury matters respectfully make the following submission to the Washington Supreme Court regarding the Superior Court Judges' Association's proposed amendments to CR 71 regarding withdrawal of counsel.

WSAJ supports and applauds efforts to improve the rules and procedures for civil litigation in this state; enhance courts' ability to effectively manage cases on their docket; and, most importantly, improve access to justice for Washingtonians.

To that end, WSAJ supports the proposed amendments to CR 71 creating new requirements ensuring that courts will receive timely notice of a withdrawal, as well as empowering clients to the best extent possible to find new counsel.

WSAJ notes that the GR 9 cover sheet for the proposed amendments state that the purpose of such notice to courts would be to "allow the court an opportunity to determine how to deal with the situation, which might include conducting a case conference with the parties, making arrangements to ensure the party is prepared to proceed without representation, or denying the withdrawal in certain situations."

Although the proposed amendments contain no express requirement for a case conference or other hearing, as a practical matter the proposed amendments likely will lead to an increase in such proceedings. WSAJ urges that in such hearings, courts must remain cognizant of attorneys' multiple duties owed to clients during and after representation if they elect to inquire into the reasons for withdrawal.

Comment 3 to RPC 1.16 recognizes this exact scenario: "The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation." The reality of practice is that irreconcilable disputes between attorneys and clients can and do arise, even in the critical 90-day pretrial period. Late dispositive rulings on claims or evidentiary developments may occur, leading to intractable disagreements between client and counsel



regarding the case's direction. Clients may become unresponsive or uncooperative. Any number of scenarios may unfold that create an actual conflict between attorney and client, materially limit an attorney's abilities of zealous advocacy for their client, or otherwise create valid grounds—and in many cases, a mandatory obligation—to withdraw.

Yet if a court inquires as to the specific reasons for withdrawal, attorneys may find themselves faced with a Hobson's choice between denying a judge's request during a hearing or divulging confidential, potentially detrimental information about their case and client in open court both to opposing counsel and the court. Even disclosing such information solely to the court may not cure the problem, as any potentially unfavorable information about the case or client may prejudice the judge conducting the soon-to-be-former client's trial.

On this basis, WSAJ respectfully asks that the following portion of RPC 1.16 cmt. 3 be added to the proposed amendments, either as part of CR 71 itself or comment to the rule:

"The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient."

Additionally, the GR 9 cover sheet states the purpose of the notice requirement is to allow courts to determine "how to deal with the situation, which might include . . . denying the withdrawal in certain situations."

Although RPC 1.16(c) provides that attorneys must comply with a court's order to continue representing a client despite good cause for withdrawal, WSAJ urges that this Court provide guidance to trial courts through comments to any amended rule that denial of withdrawal should not become normalized. The 90-day period before trial often is a crucial, work-intensive period in a civil case, including dispositive motions; critical discovery; alternative dispute resolution; drafting and filing of pretrial motions in *limine*, jury instructions, and all core components of preparing a case for trial; and much more. WSAJ believes that it does not advance litigants' access to justice and right to a fair trial to encourage continued, involuntary representation when a significant breakdown in the attorney-client relationship has occurred and an attorney's ability to zealously represent their client may be materially impaired.

Sincerely,

A handwritten signature in black ink, appearing to read "Celia Rivera". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Celia Rivera  
WSAJ President

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Linford, Tera](#)  
**Subject:** FW: WSAJ - CR 71 and RDI  
**Date:** Thursday, April 29, 2021 8:38:34 AM  
**Attachments:** [CR 71 Supreme Court Letter.pdf](#)  
[RDI Supreme Court Letter.pdf](#)

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**From:** Celia Rivera [mailto:[celia@rivalawoffices.com](mailto:celia@rivalawoffices.com)]  
**Sent:** Wednesday, April 28, 2021 6:21 PM  
**To:** OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](mailto:SUPREME@COURTS.WA.GOV)>  
**Cc:** Sara Crumb <[sara@washingtonjustice.org](mailto:sara@washingtonjustice.org)>; Tina Whitcher <[tina@washingtonjustice.org](mailto:tina@washingtonjustice.org)>  
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Honorable Chief Justice Gonzalez,

Attached please find WSAJ's letter asking you to reject the Proposed Rules for Discipline and Incapacity, and our letter proposal to the Superior Court Judge's Association's proposed amendments to CR 71.

Thank you in advance for your consideration. As always we appreciate the opportunity to be heard,

Respectfully,

Celia M. Rivera  
Attorney at Law

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