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VIA E-MAIL

July 29, 2021

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

Re: New Rule RDIs, Titles 1 – 17, Publication Orders 25700-A-1328, 1344

Dear Madam Clerk & Honorable Justices of the Washington Supreme Court:

I am a Washington lawyer whose practice focuses on advising lawyers and law firms on all aspects of legal ethics and lawyer professional responsibility. My practice also includes representing respondent lawyers in disciplinary proceedings. I have served as chair of the WSBA Rules of Professional Conduct Committee, as well as numerous WSBA task forces and subcommittees, including those dealing with advance fees, the advertising and solicitation ethics rules, and the creation of the newly-constituted Committee on Professional Ethics. I am a co-author of the WSBA treatise the Law of Lawyering in Washington, and served as an editor for the recent updated edition of the WSBA Washington Legal Ethics Deskbook. I am also a former president of the Association of Professional Responsibility Lawyers (APRL), a national association of lawyers who are experts in the law of lawyering, and a long-time member of the ABA and its Center for Professional Responsibility. I currently serve as co-chair of the APRL Future of Lawyering Committee.

I agree with many of the thoughtful comments that have been submitted recommending that the Supreme Court reject the proposed new RDIs, especially those of former Chief Disciplinary Counsel Anne Seidel and the Respondents' Counsel Roundtable, on both procedural and substantive grounds. I will not repeat those here. Instead, I am writing to make a different point: that large-scale changes to the lawyer disciplinary system not be adopted while consideration of reforming more broadly how legal services are offered and regulated plays out in our state.

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I have been deeply involved in regulatory reform efforts now under way in several states around the country to improve access to legal services by consumers at low and moderate income levels, and I understand that the WSBA Practice of Law Board is in the process of recommending the creation of a regulatory sandbox or laboratory along the lines of what has been established in Utah (and now being considered in several states) to the Supreme Court for consideration here. One of the basic premises of reform in states like Utah is a recognition that regulation of legal services should be risk- and outcome-based rather than punitive and proscriptive, at least for non-traditional, nonlawyer providers of legal services. In addition, some jurisdictions have piloted or are looking closely at more proactive, management-based models for regulating legal services by lawyers, focusing less on enforcing disciplinary rules as “law” and more on working positively to help lawyers and legal professionals engage in ethical service of clients. Based on my own experience representing and advising lawyer clients in multiple practice settings, I believe such approaches could have significant advantages over the disciplinary system that is currently in place for lawyers in virtually every state.

There would admittedly be significant challenges to changing the fundamental approach to lawyer regulation in our state along these lines, and I am not advocating for changing these regulatory models for Washington lawyers at this time. But I fear that adopting a new, “streamlined” set of rules for lawyer discipline as proposed will essentially lock in a prosecutorial model of legal ethics well into the future here that will be difficult if not impossible to unwind, and that will not necessarily be in the best interest of consumers of legal services or our profession in the long term. So let’s leave the current system in place while regulatory changes are studied and evaluated. I believe a likely outcome will be that the Court will conclude that regulation of lawyers and law firms should be very different in light of what we learn from these efforts.

I respectfully encourage the Court to reject these proposed new RDIs (and related rules), or at the very least, to defer their consideration indefinitely until regulatory reform efforts have been implemented, and the results of those efforts have been studied in a meaningful way. I am available at your convenience to answer any questions you may have on these issues.

Sincerely,

Arthur J. Lachman
WSBA #18962

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Attached is a comment submitted on the above-referenced rule proposal. Please acknowledge receipt, and let me know if you have any questions.

Thank you,
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