

# WASHINGTON STATE BAR ASSOCIATION

Board of Governors

Kyle D. Sciuchetti, President

January 28, 2021

The Honorable Steven González  
Chief Justice, Washington State Supreme Court  
415 12th Ave SW  
PO Box 40929  
Olympia, WA 98504-0929

The Honorable Charles W. Johnson  
415 12th Ave SW  
PO Box 40929  
Olympia, WA 98504-0929

Re: Comment to Submit to the Washington Supreme Court in Support of the Pro Bono Council's Suggested Amendments to Rule of Professional Conduct 6.5

Dear Chief Justice González and Justice Johnson:

The purpose of RPC 6.5 is to maximize the ability of limited legal service providers and participating lawyers (pro bono and staff) to assist eligible individuals by exempting short-term free legal services from the normal rules regarding conflicts of interest, unless a participating lawyer has personal knowledge of a conflict and the conflict cannot be mitigated by specific screening measures. This rule is essential to the functioning of short-term legal advice clinics throughout Washington. It eases the burdens on volunteer attorneys because it means that they are not required to run a comprehensive check for conflicts before every client they advise, a burden that would very likely keep attorneys from volunteering at an advice clinic at all. Further, it also allows the program itself to serve clients who may be in conflict, as long as the screening measures are utilized to ensure client information remains confidential. This aspect of the rule is essential for increasing access to justice for low-income Washingtonians. In most geographic areas of the state there are only one or possibly two organizations providing civil legal aid. This rule protects eligible clients from being denied services and left with no other option for legal aid service simply because the other party sought assistance first.

As outlined by the Pro Bono Council (PBC) in their GR9 coversheet, the requirement found in RPC 6.5(a)(3)(ii) that the parties be "notified of the conflict" creates the potential for disclosure of confidential information and a resulting risk to client safety. Specifically, by receiving an individualized notice of a conflict in their case, a party may be able to deduce the identity of the other party, particularly if they have a close relationship, such as being current or former intimate partners. This creates the risk that one party will retaliate against the other, especially if the legal issue one or both parties are seeking assistance with relates to their personal relationship, such as occurs in a domestic violence situation. The PBC's suggested amendments would enable these programs to better protect their clients' confidential information, and importantly, the safety of clients who may be seeking legal advice for legal issues related to domestic violence. Additionally, since the rule does not require the parties to consent to receiving assistance despite the conflict, providing notice only after a conflict has been identified provides no opportunity for the party to raise any objection regarding the conflict or opt out of obtaining assistance from the pro bono attorney before the conflict becomes an issue. In contrast, receiving prospective notice of the potential for a conflict and information about screening mechanisms—as the suggested amendments would allow—would permit the parties the opportunity to opt out of receiving service if they believe it would be in their best interest.

The 2015 Civil Legal Needs Study found that 71.1% of low-income households in Washington State faced at least one civil legal issue per year, and the average was 9.3 civil legal issues per household per year. For people who

identified as victims of domestic violence and/or sexual assault, the average was 19.7 legal issues. Additionally, the study found that only 24% all survey respondents were able to get some level of legal help with at least one of their civil legal issues. The flexibility provided by RPC 6.5 is an important component of insuring increased access to justice and the suggested amendments would allow limited legal service programs to utilize the rule while increasing their ability to protect client safety.

In developing this comment, the WSBA Pro Bono and Public Service Committee recognizes and appreciates the outreach to stakeholders done by the PBC throughout this process. Further, the revisions made by the PBC to the original proposal (which was submitted to this Court in 2019 and withdrawn in March 2020) make this proposal stronger as a result of incorporating feedback from the WSBA Committee on Professional Ethics.

The suggested amendments would provide needed clarity to non-profit and court-annexed programs providing limited legal assistance, allowing them to effectively utilize the benefits of RPC 6.5 and, consistent with the purpose of the rule, allow them to be more accessible to low-income individuals. For the reasons outlined above, the WSBA supports the adoption of the suggested amendments to RPC 6.5.

Sincerely,

A handwritten signature in blue ink, appearing to be 'KS', followed by a horizontal line.

Kyle D Sciuchetti  
President

CC: Terra Nevitt, WSBA Executive Director  
Bonnie Aslagson, WSBA Pro Bono and Public Service Committee Co-Chair  
Nicholas Larson, WSBA Pro Bono and Public Service Committee Co-Chair  
Diana Singleton, WSBA Equity & Justice Manager  
Shannon Hinchcliffe, Administrative Office of the Courts

**To:** Washington State Bar Association - Board of Governors

**From:** Nicholas Larson and Bonnie Aslagson, Co-Chairs, Pro Bono and Public Service Committee  
Paige Hardy, WSBA Staff Liaison to the Pro Bono and Public Service Committee

**Date:** December 29, 2020

**Re:** *Proposed Comment to Submit to the Washington Supreme Court in Support of the Pro Bono Council's Suggested Amendments to Rule of Professional Conduct 6.5, submitted to the Court October 14, 2020*

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The purpose of RPC 6.5 is to maximize the ability of limited legal service providers and participating lawyers (pro bono and staff) to assist eligible individuals by exempting *short-term free* legal services from the normal rules regarding conflicts of interest,<sup>1</sup> unless a participating lawyer has personal knowledge of a conflict and the conflict cannot be mitigated by specific screening measures. This rule is essential to the functioning of short-term legal advice clinics throughout Washington. It eases the burdens on volunteer attorneys because it means that they are not required to run a comprehensive check for conflicts before every client they advise, a burden that would very likely keep attorneys from volunteering at an advice clinic at all. Further, it also allows the program itself to serve clients who may be in conflict, as long as the screening measures are utilized to ensure client information remains confidential. This aspect of the rule is essential for increasing access to justice for low-income Washingtonians. In most geographic areas of the state there are only one or possibly two organizations providing civil legal aid. This rule protects eligible clients from being denied services and left with no other option for legal aid service simply because the other party sought assistance first.

As outlined by the PBC in their GR9 coversheet, the requirement found in RPC 6.5(a)(3)(ii) that the parties be “notified of the conflict” creates the potential for disclosure of confidential information and a resulting risk to client safety. Specifically, by receiving an individualized notice of a conflict in their case, a party may be able to deduce the identity of the other party, particularly if they have a close relationship, such as being current or former intimate partners. This creates the risk that one party will retaliate against the other, especially if the legal issue one or both parties are seeking assistance with relates to their personal relationship, such as occurs in a domestic violence situation. The PBC’s suggested amendments would enable these programs to better protect their clients’ confidential information, and importantly, the safety of clients who may be seeking legal advice for legal issues related to domestic violence. Additionally, since the rule does not require the parties to consent to receiving assistance despite the conflict, providing notice only after a conflict has been identified provides no opportunity for the party to raise any objection regarding the conflict or opt out of obtaining assistance from the pro bono attorney before the conflict becomes an issue. In contrast, receiving prospective notice of the potential for a conflict and information about screening mechanisms—as the suggested amendments would allow—would permit the parties the opportunity to opt out of receiving service if they believe it would be in their best interest.

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<sup>1</sup> Found in RPCs 1.7, 1.9(a), and 1.18(c).

The 2015 Civil Legal Needs Study<sup>2</sup> found that 71.1% of low-income households in Washington State faced at least one civil legal issue per year, and the average was 9.3 civil legal issues per household per year. For people who identified as victims of domestic violence and/or sexual assault, the average was 19.7 legal issues. Additionally, the study found that only 24% all survey respondents were able to get some level of legal help with at least one of their civil legal issues. The flexibility provided by RPC 6.5 is an important component of insuring increased access to justice and the suggested amendments would allow limited legal service programs to utilize the rule while increasing their ability to protect client safety.

The BPPSC recognizes and appreciates the outreach to stakeholders done by the PBC throughout this process. Further, the revisions made by the PBC to the original proposal (which was submitted to this Court in 2019 and withdrawn in March 2020) make this proposal stronger as a result of incorporating feedback from the WSBA Committee on Professional Ethics.

The suggested amendments would provide needed clarity to non-profit and court-annexed programs providing limited legal assistance, allowing them to effectively utilize the benefits of RPC 6.5 and, consistent with the purpose of the rule, allow them to be more accessible to low-income individuals. For the reasons outlined above, the WSBA supports the adoption of the suggested amendments to RPC 6.5.

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<sup>2</sup> [https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy\\_October2015\\_V21\\_Final10\\_14\\_15.pdf](https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf)

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Linford, Tera](#)  
**Subject:** FW: WSBA: Suggested Amendments to Rule of Professional Conduct 6.5  
**Date:** Thursday, February 4, 2021 10:59:38 AM  
**Attachments:** [image001.png](#)  
[image004.png](#)  
[2021-01-28 Comment to RPC 6.5 Ltr to Supreme Court.pdf](#)  
[20.12.29 comment in support from PBPS final.pdf](#)

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**From:** Benway, Jennifer  
**Sent:** Thursday, February 4, 2021 10:42 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Jennings, Cindy <Cindy.Jennings@courts.wa.gov>; Hinchcliffe, Shannon <Shannon.Hinchcliffe@courts.wa.gov>  
**Subject:** FW: WSBA: Suggested Amendments to Rule of Professional Conduct 6.5

Hello,  
I've attached an errant comment on the proposal to amend RPC 6.5.  
Thank you!

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**From:** Hinchcliffe, Shannon  
**Sent:** Thursday, February 4, 2021 10:32 AM  
**To:** Benway, Jennifer <[Jennifer.Benway@courts.wa.gov](mailto:Jennifer.Benway@courts.wa.gov)>  
**Cc:** Jennings, Cindy <[Cindy.Jennings@courts.wa.gov](mailto:Cindy.Jennings@courts.wa.gov)>  
**Subject:** FW: WSBA: Suggested Amendments to Rule of Professional Conduct 6.5

J, can you take a look at this and see if it is a new proposal or a comment? If it's a comment, it needs to be forwarded to the clerk's office for posting.

I can work on making introductions next week to WSBA staff.

**Shannon Hinchcliffe** | Office of Legal Services and Appellate Court Support  
Administrative Office of the Courts | P.O. Box 41174 | Olympia, WA 98504-1170  
☎ (360) 357-2124 | ✉ [shannon.hinchcliffe@courts.wa.gov](mailto:shannon.hinchcliffe@courts.wa.gov) | 🌐 [www.courts.wa.gov](http://www.courts.wa.gov)  
**Get the most current information on the Courts' response to COVID-19 [here](#).**

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**From:** Shelly Bynum [<mailto:Shellyb@wsba.org>]  
**Sent:** Wednesday, February 3, 2021 1:32 PM  
**To:** Gonzalez, Justice Steve <[J\\_S.Gonzalez@courts.wa.gov](mailto:J_S.Gonzalez@courts.wa.gov)>; Johnson, Justice Charles W. <[Charles.Johnson@courts.wa.gov](mailto:Charles.Johnson@courts.wa.gov)>  
**Cc:** Lipford, Ashley <[Ashley.Lipford@courts.wa.gov](mailto:Ashley.Lipford@courts.wa.gov)>; Kyle Sciuchetti ([kyle.s@millernash.com](mailto:kyle.s@millernash.com)) <[kyle.s@millernash.com](mailto:kyle.s@millernash.com)>; Terra Nevitt <[terran@wsba.org](mailto:terran@wsba.org)>; Bonnie Aslagson <[attorney@tcvls.org](mailto:attorney@tcvls.org)>; nlarson ([nlarson@mpbf.com](mailto:nlarson@mpbf.com)) <[nlarson@mpbf.com](mailto:nlarson@mpbf.com)>; Diana Singleton <[dianas@wsba.org](mailto:dianas@wsba.org)>; Hinchcliffe, Shannon <[Shannon.Hinchcliffe@courts.wa.gov](mailto:Shannon.Hinchcliffe@courts.wa.gov)>  
**Subject:** WSBA: Suggested Amendments to Rule of Professional Conduct 6.5

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Good Afternoon,

Please see the attached documents from WSBA President Kyle Sciuchetti regarding Suggested Amendments to Rule of Professional Conduct 6.5.

Thank you,

Shelly Bynum



**Shelly Bynum | Executive Administrator I**

**Washington State Bar Association** | 206.239.2125 | fax 206-727.8316 | [shellyb@wsba.org](mailto:shellyb@wsba.org)

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | [www.wsba.org](http://www.wsba.org)

The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact me at [shellyb@wsba.org](mailto:shellyb@wsba.org).

**COVID 19: Most WSBA employees are working remotely; click here for more information and resources.**