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March 1, 2021

Clerk of the Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0920

supreme@courts.wa.gov

RE: PUBLIC COMMENT TO PROPOSED RPC AMENDMENTS<sup>1</sup>

Dear Chief Justice and Associate Justices:

I was (almost) shocked at the letter from Dan Bridges in the February Bar News, which reported that legal referral fees had long been allowed for two county bar associations for certain "good causes," which seemed to me trying to "do well while doing bad," especially where these bar associations had allegedly not conformed to using this generosity for the purpose(s) that were used to justify the practice.

When I was first admitted to practice law, I was pleased with the ethical opinions, rules and conventions that prohibited legal referral fees. I thought it was a great rule. Although I don't recall knowing about referral rules in any profession at that time, I have encountered other professionals in my own behalf, particularly dental, optical and certain medical offices where referral fees are common and they seemed to be proliferating after I became aware of them. I started seeing referrals often, and it seemed like it was a matter of course for some. I looked in the statutes and WAC's, but didn't see that they were disallowed.

After I noticed the frequency of referrals by other professions and that the referrals were typically based on my issues, that I had not recognized, often even after the referrals pointed them out. I gradually concluded that the frequency that I was seeing them used by other professions appeared to be contrary to the purposes of the prohibitions against referral fees for lawyers.

That resulted in my concerns of the referring professionals' motives, which resulted in skepticism and my inclinations to decline the volunteered referrals unless my experience confirmed real and present need for the time, trouble and expense of another consultation.

This almost always led to my ignoring the referrals, as I could seldom determine independently that it was important for me to accept the referred services because to me the motives were suspect to me if I could not independently confirm their need.

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<sup>1</sup> Re: Public Comment On Suggested Amendments to RPC 7.2(b)(2), Comment 6; RPC 7.2, Comment 5; and RPC 1.5(e)(2)

This could have been of much detriment (and may still be) to me if the referral was for a real and present danger, but I don't recall that happening. Perhaps I was lucky, while others who did not trust and then declined unrequested referrals may not have been so fortunate, to their detriment, but that was not my experience.

Consequently, I now assume that these referrals are for the primary benefit of the referring professionals, rather than for me. And thus, any benefit might be only that of the recipient, who received a new patient, and for the referrer, who might get a return referral or a payment, all at the indirect and perhaps undisclosed cost that would be shouldered by the patient.

I remain committed to getting second opinions for significant issues, whether or not I am dealing with an unrequested referral, if I believe it would be of significant value to me, but only after my independent judgment had confirmed its value.

The reason lawyers aren't permitted to use referral fees is because they drive up the costs ultimately paid by clients, as the fees would increase the costs of doing business and would be passed on, eventually to clients.

If legal referral fees are to be allowed, which I am against, that allowance should be controlled rigidly and by Rules of Professional Conduct that do not now exist. If that is to be the case, any RPC changes should consider the risk of clients suffering damages, not only because of the cost of the fees, but also the possibilities of the clients declining to act on referrals because of the reasons I described above. Continuing enforcement of the existing prohibitions on legal referral fees will not allow, create or support the skepticism and veiled risks that I describe above for lawyers' clients, nor provide a reason for clients to decline a referral only for reasons of distrust.

I don't question the value of supporting the two county bar associations' missions, but I believe it is inappropriate to fund them with the funds of clients under the current circumstances that Mr. Bridges describes now existing or even those that will exist after the proposed "fixes."

Very truly,

*/s/ Charles M. Cruikshank*

Charles M. Cruikshank

CC3:os

cc: Dan Bridges, [Dan@mcbdlaw.com](mailto:Dan@mcbdlaw.com), 3131 Western Avenue, Suite 410, Seattle, WA 98121

## Linford, Tera

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**From:** OFFICE RECEPTIONIST, CLERK  
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**Attachments:** WSBA Referral Fees FINAL 3.1.2021....pdf

**Categories:** Rule Comments

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“And to make progress, we have to stop treating our opponents as our enemies. They are not our enemies. They are Americans.” Joe Biden, President-Elect 2020

Charlie Cruikshank -o- Lawyer since 1975

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