



April 21, 2021

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

RE: Comments on Proposed Changes to RPC 7.2

Dear Chief Justice:

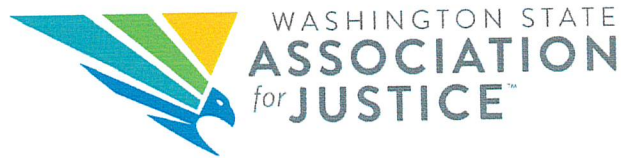
The Washington State Association for Justice (WSAJ) respectfully submits this letter urging the Supreme Court to reject the proposed amendments to RPC 7.2. If adopted, this proposal has potential to compromise the professional independence of attorneys by letting a non-attorney, non-party take a financial stake in a claim. Allowing these referral sources to take an unregulated interest in the justice system adds a new set of interests, previously seen as unethical, that could negatively influence considerations for taking a case at the outset and whether to recommend a client settle or go to trial. If these proposed rule changes are accepted, it could increase the cost of cases, and it will financially benefit those who otherwise would have no business in the case.

Further, the proposal lacks any analysis about the problem it is trying to solve. The proponents provided no evidence this proposal is "necessary statewide." GR 9(a)(4). They provided no evidence this experiment with non-lawyer fee sharing works without creating unintended consequences.

**This Proposal Puts Attorneys' Professional Independence at Risk and Introduces a New, Unregulated Entity into the Attorney-Client Relationship**

The Rules for Professional Conduct are clear about the roles and responsibilities when a contingent fee is split. RPC 1.5 requires attorney fees charged to be reasonable according to the considerations of complexity, time involved, experience of the lawyer, etc. Lawyers may split fees so long as there is joint representation, joint work, and joint responsibility for the outcome. The fee split must be in proportion to the services provided and the arrangement fully disclosed to the client. "Joint responsibility for representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership." Comment 7 to RPC 1.5.

Legal fees are tied to legal ethics. The lawyer must act competently and diligently in representing a client and earns her wages according to her practice. When the lawyer divides the fee with another, the RPC's liken this to a partnership. Partnerships, in the RPC's and elsewhere in the law, contemplate joint responsibility, joint liability, and joint reward. But that would change under this proposed rule change. The proposed rule would entitle a referral source the financial reward without requiring joint liability, joint responsibility, or regulation by this Court and the WSBA.



The potential ramifications could be significant, insidious, and difficult to detect. There are no safeguards to prevent a referral source, who has all the up-side of a financial reward in the case but none of the legal responsibility or ethical and legal duties to a client, from pushing for risk-seeking and potentially unethical behavior (whether known or unknown) to maximize their reward. As the proposed rule is written, a referral source's only interest in a referral is money, and it is not required to consider the client's best interest, as lawyers are.

If the referral source has control of future case referrals, that source can potentially leverage that power to (either consciously or unconsciously) pressure lawyers into litigation tactics, risk tolerance or risk avoidance the referral source prefers to the detriment of the client. This gives rise to implied or even explicit quid pro quo influence: "if you don't get the result I want, I won't refer you more cases." Long term business relationships and future business prospects can be powerful influencers in the decision-making process.

If a referral source can take a financial stake in the outcome of a case without the risk of accountability or regulation, it is akin to betting on the justice system. The referral source is not a party in interest for the case, nor does it have any interest in the shaping of law in the courts or the justice system generally.

### **What Problem is This Proposal Trying to Solve?**

It is unclear what goals the proposed amendments to RPC 7.2 hope to accomplish once these entities are allowed to participate in fee sharing. The proposal assumes without explaining that there is a problem that needs to be solved and these proposed changes will solve the problem. The proponents, however, offered no evidence that these rule changes will be beneficial to the public. GR 9(a)(4) requires proposed rule changes to be "necessary statewide." The proponents fail to meet this requirement.

WSAJ shares the concern about access to justice, especially for low-to-moderate income individuals and marginalized communities. WSAJ also supports referral services that charge a permissible fee for being part of the referral network. But allowing these entities to take a financial stake in legal cases without any legal responsibility or regulation potentially opens a Pandora's box and creates more problems than it solves. This Court should reject the proposed changes to RPC 7.2.

Sincerely,

A handwritten signature in black ink, appearing to read "Celia Rivera". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Celia Rivera  
WSAJ President