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Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: Comments in support of Suggested Amendments to APR 11, Mandatory Continuing Legal Education

To the Honorable Justices of the Washington State Supreme Court:

My comments supporting the proposal before you to require lawyers to spend 1 hour every 3 years learning about equity, inclusion and the mitigation of bias in the legal profession is based on a lifetime of my personal experiences and over 42 years of actively practicing law, representing families and individuals in a solo or small firm law practice. I put this proposal in the category of reducing the frequency of describing legal interventions thusly: "If only I had known A, I would have done B differently and thus more effectively and with a more positive and honorable outcome."

I found that a critical key to success in effectively solving the problems for which clients sought my advice and services was understanding the root of the problem and how my client perceived it, then finding a way to translate the client's perception into something a judge or other affected party could understand. After 42 years, I have literally thousands of examples to share that demonstrate my many successes in this regard. But, this letter is not about my successes. It tells the story of the time there was an incredible failure – by me as a lawyer and by the court commissioners who ruled on this case – that adversely impacted the life of a child in the middle of growing up, his parents, and their extended families, and the hope that this proposed rule change is a small step toward preventing such needless failures in the future.

During the 2008-09 recession, I was starting my fourth decade practicing law, a large part of which was family law. A new client came to me who had court-ordered, permanent custody of his son, at the time about 14. A modification petition had been filed and temporary custody immediately granted to the mother without prior notice to him. He was in over his head, needed legal help, and his family had collectively scrounged up $500 for him to retain a lawyer. He was African American. He and his family figured he had a better chance of success in a white man's court being represented by an experienced family law attorney who was white. Thus it was that he asked for my help. I agreed to help him on a limited representation basis, for the upcoming hearing on the temporary restraining order.

Never before or since have I met a person whose every demeanor conveyed hopelessness. He had no hope. None. I could only guarantee effort, not success, in his quest to regain his son's custody; I could not reverse a loss of hope.

He was a large construction equipment operator, highly skilled and in a union, but the only place in the world at the time employing his skills was in the Middle East. All commercial construction had stopped in the Northwest, so he was an unemployed single dad with no hope for immediate employment and no desire to abandon his son or remove him from living in the Northwest while he chased employment in the Middle East. He was an ex-felon (some kind of assault conviction) who had served his time, complied with his sentencing requirements, and had reformed and built a positive life for himself and his son. When he and his son's mother (also African American) split up, he had the courage and moxy to stand up and insist that his son be protected from her many deficiencies. A custody trial was held before a King County judge with both parents present; the judge agreed with him and placed his son's primary custody with him.

His son was attending public school, was tall and skinny, and had a passion for basketball. My client worked hard to connect his son with every opportunity my client could find to develop himself, his academics, his basketball skills, and his character; his son was a good player in his public school's highly competitive basketball team. One day, a critical game was played. Son did what people do sometimes: had a bad day, played a bad game. His team lost. Dad was there supporting his son, watching the game and all of his son's mistakes that day. From Dad's perspective, suddenly all of his hopes for his son to have a better life than he had, for his son to go to college on a basketball scholarship, for his son to have opportunities he would never have, dissolved before his eyes. He lost it. A school's security camera video showed the short but angry exchange started by father after son left the locker room after the game, and father cuffing son on the side of the head, much like my own father described my own grandfather disciplining him at times. But, after this explosion, father and son went home. There had not been violence before or since.

Both of my parents were raised in central Kentucky and abhorred the discrimination they witnessed growing up. My siblings and I were sheltered from the cruelties they witnessed. I do not recall going to school with a single African American student, from Kindergarten through Law School. Are you old enough to remember the children's rhyme/game "Eeny meeny miney moe, catch a tiger by the toe ..."? When I was 5 or 6 and playing in our neighborhood just north of Washington, DC, I brought this new rhyme home. At the time, the rhyme did not contain the word "tiger", but rather an unspeakable insult that rhymes with tiger. My mother made it very clear that I was never to utter that word again, ever, but not the reason why. As I grew up and became educated, I learned nothing and knew nothing about the African American, Hispanic, Japanese, or other minority experiences and cultures.

Is it any wonder, then, that I did not understand, or even know the questions to ask to understand, what really drove this client of mine to his outburst that resulted in his son no longer living with him, by court order? Knew nothing of the PTSD he didn't know how to identify or talk about? Knew nothing of how the present day consequences of past slavery, discrimination, family disruptions, lynchings, racially provoked murders, and other traumas affected the generations of his family before him, and thus him? Knew nothing of what it felt like to be in prison, knowing a white man would likely have been charged differently, sentenced differently, treated differently by jailers and fellow inmates, or perhaps not charged at all for whatever he did or was imposed on him involuntarily that resulted in him doing time, or how those experiences changed him and his parenting? Knew nothing of the consequences of poverty and racism that resulted in the mother of his child not having access to the resources she needed to improve her health and parenting deficiences and be a better mother to their son? Knew nothing of the consequences of poverty and racism that surely contributed to his explosiveness that day? Knew nothing of the relative affect on this particular child of his mother's severe deficiences, his father's one act of outrage, where the fulcrum really was balancing the parents' deficiencies with their positive parenting effects, or what long-term effect this sudden custody change (which, for a lack of resources, became permanent), driven by a minute of parental outrage with no judicial knowledge of where it came from, would have on this particular child? Knew nothing of how this man came to feel helpless and hopeless? And, therefore, could not communicate this to a court to convey that not only was my client not a danger to his son, he was his son's best hope for a better future than the life he'd had to that point in time?

The white court commissioner who signed the temporary custody change without notice of hearing had a similar problem. The white family law court commissioner who left the temporary custody change in place not only had a complete lack of understanding of where my client came from and what impact her decision would have on his child, but imposed her decision with a litany of disrespect of my client from the bench, denigrating his humanity, telling him he learned nothing from prison, that "You'd better straighten up, buddy!", and more, clearly communicating to him that in her eyes, all of the efforts that he'd made to reform his life, to save his son from the adverse effects of the mother's deficiencies while still supporting his son's relationship with the mother, providing an environment at home that supported his son's scholastic and athletic achievements, emotional and spiritual growth, and development of good moral character, all keys to opening doors of opportunity that were closed to the father, were for naught.

The mother was delighted to have control of her son and income from child support that likely was used for drugs. My client gave in and gave up. He had no hope.

I felt at the time, and still feel, that my ignorance failed this client and more importantly, his son. Similarly, the same can be said of both court commissioners.

Perhaps, if everyone involved in the legal system that intervened with this family so many times, in so many ways, had spent some time learning about equity, inclusion, and the mitigation of bias in the legal profession, had something new or revealing about these topics to share with friends, to discuss, to think about, to read, to analyze, the result would have been most importantly a respect for the humanity of each parent, and perhaps a better outcome for my client's son and thus his parents and extended family. We will never know in this case. But, we can try harder for the next one.

What is the power of one hour? Consider this recent experience my retired, engineer husband just had with an African American man on his senior softball team and then shared with me. As the team enjoyed a post-game meal together at a local watering hole, somehow the term "bro" came up. Someone asked what it meant. All of the white men just assumed it was a common, positive slang term and that was it. Oh, no, they were informed. The term "bro" had its roots in the selling off of children and the break up of families during the time of slavery in this country. Slaves did not know who was family and who wasn't; frequently did not know where their blood family members were. They were all suffering the tyranny of slavery together, so it came to be that many considered all people of African descent to be family – brothers and sisters – "bro", for short. Without this short tutorial, we – well educated, successful, and now retired – would have been ignorant of this remnant of slavery that is commonly with us today.

Surely, all lawyers and all judges have at least one hour every three years available to focus on learning how our history continues an unwanted or unrecognized barrier (and how they can help remove it) to the advancement by our profession of liberty and justice for all.

With kindest regards,

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