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April 28, 2023

Sent via email to supreme@courts.wa.gov

Honorable Charles W. Johnson Honorable Mary I. Yu
Supreme Court Rules Committee
Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: Comments to Amendments to RPC 1.8(e)

Dear Honorable Charles W. Johnson, Honorable Mary I. Yu, and Committee on Professional Ethics:

Columbia Legal Services (CLS) is a non-profit civil legal aid firm that advocates for laws that advance social, economic, and racial equity for people living in poverty in Washington State. Using a systemic approach, CLS supports communities through impact litigation and policy advocacy, with a particular focus on people that are incarcerated and immigrants. We are in full support of the amendment to RPC 1.8(e). We appreciate all the work by the Committee on Professional Ethics, the Supreme Court, the Board of Governors, and WSBA to ensure that RPC 1.8(e) allows indigent litigants access to the court without worrying about the potential financial burden and at the same time prevents attorneys from influencing their clients to bring cases for financial gain or to advance the interest of the attorney.

The changes to RPC 1.8(e) will permit non-profit legal services, public interest organizations, or lawyers representing indigent client's pro bono or through a law school clinic to pay court costs, expenses, and provide modest gifts for indigent clients which will make it possible for these clients to have access to the court. We endorse the changes to RPC 1.8(e) because our clients lack the ability to participate in litigation due to their financial situation and our experience has been that many of our clients are fearful of bringing litigation forward when they are told that they will be responsible for costs. Many of our clients are so impoverished that they need assistance with a phone card to be able to speak with their attorney or assistance with gas or a bus pass to get to a meeting, a deposition or court. The amendment will make it possible for CLS to cover these expenses and provide assurances to indigent clients that they will not be held responsible for litigation costs that were fronted on their behalf if they do not prevail.



THE ALLIANCE
for Equal Justice

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The only slight suggestion CLS has pertains to the language of Comment 13, which reads as follows:

“[13] Financial assistance, including modest gifts pursuant to paragraph(e)(3), may be provided even if the representation is eligible for fees under a fee-shifting statute. However, paragraph (e)(3) does not permit lawyers to provide assistance in other contemplated or pending litigation in which the lawyer may eventually recover a fee, such as contingent-fee personal injury cases or **cases in which fees may be available under a contractual fee-shifting provision**, even if the lawyer does not eventually receive a fee.” (Emphasis added)

The Comment 13 language is not contained in the suggested amendment itself. The bolded language above could prevent a legal services attorney from being able to front the expenses of indigent individuals without an expectation of payment when the right to costs and attorney's fees arise under a contract such as a contract for employment, consumer contracts, or residential leases if the indigent client is already being representing in another matter. This exclusion seems contrary to the intent to increase access to justice for the public since it seems to prohibit paying for fees without an expectation of payment and gifts in these circumstances. The language of RPC 1.8(e) as proposed clearly prohibits an attorney from using gifts or other financial assistance to induce a client to retain the attorney in another matter in which the attorney may be financially interested. Therefore, we believe that the language of Comment 13 is unnecessary and may lead to needless confusion and keep indigent individuals from receiving essential legal services. Given the potential downside to the language, CLS suggests that it be removed from the final amendment.

Sincerely,

COLUMBIA LEGAL SERVICES



Blanca Rodriguez
Deputy Director of Advocacy

From: [OFFICE RECEPTIONIST, CLERK](#)
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Subject: FW: Comments re: Amendments to RPC 1.8(e)
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Hello,

Attached please find comments to Amendment RPC 1.8(e) on behalf of Columbia Legal Services.

Sincerely,

Martha Márquez, Legal Assistant

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Our vision of justice: A Washington State in which every person enjoys full human rights and economic opportunities.

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