

April 29, 2011

Julio A. Castillo, Clerk of Court
District of Columbia Court of Appeals
430 E Street, N.W., Suite 209
Washington, D.C. 20001

RE: Proposed Amendment to Rule 6.1 of the District of Columbia Rules of Professional Conduct

Dear Mr. Castillo:

The Legal Aid Society of the District of Columbia¹ hereby submits these comments in favor of the proposed amendment to Comment [5] of Rule 6.1 of the District of Columbia Rules of Professional Conduct, which would raise D.C.-licensed attorneys' recommended pro bono financial contribution from \$400 to \$750. The aspirational amount in Comment 5 is outdated as it derives from 1997 and 1998 resolutions of the local and federal judicial conferences. In the last decade and a half, the unmet legal needs have continued to outstrip the available resources, even as legal compensation has increased at or above the level of inflation. It is time to update the suggested contribution.

Demand for Legal Services in the District

More than one in four District children and more than one in three residents who live east of the Anacostia River live in poverty. People living in poverty encounter the legal system at every turn, and often where the stakes are high. Without a lawyer, they are at risk of losing their homes, their food stamps, their access to health care, or the custody of their children. In addition, persons living in poverty are more likely to experience language and cultural barriers that keep them from meaningfully asserting their rights. It is critically important that legal services are available to address these needs.

Legal Aid and other services providers have seen a drastic increase in demand since the onset of the recession. Although the pain of the recession has been felt across the District, that pain has been most acute among people who were low-income before the recession and those who were teetering on the precipice between being low-income and middle-income. The brunt of recession-related job loss in the District has fallen on low-wage workers: salespeople, food preparers and servers, janitors and maintenance workers, movers, security guards, construction workers.²

Legal services providers have reported an approximately 20% increase in demand for services since the onset of the recession. These increased demands have been especially concentrated in a few areas of the law such as foreclosure, domestic violence, public assistance, and child support. The recession has caused other legal problems to emerge as well, such as ensuring that the tenants of foreclosed landlord-

¹ The Legal Aid Society was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Legal Aid is both the oldest and largest general civil legal services program in the District of Columbia. Over the last 79 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of consumer law, family law, housing law, and public benefits law. We also have an appellate practice.

² Katie Kerstetter, *Increase in DC's Unemployment Rate Falls Heavily on Those Least Able to Afford It 2* (June 25, 2010), <http://www.dcfpi.org/wp-content/uploads/2010/06/5-25-10unemployment.pdf>.

owned properties remain in their housing. Even before the recession, we were only meeting 10% of need, and now we are able to meet even less of the demand for our help.

Impact of the Recession on Resources for Legal Services

As the need for legal assistance has increased, the resources available to meet that need have decreased. Decreases in revenue have decreased public and private contributions to legal services providers. The recession has affected funding from private attorney donations, private foundation grants, the District's Interest on Lawyers Trust Accounts (IOLTA) program, and from the District government (in Fiscal Year 2010, access to justice funding was cut by \$900,000.)³

The resources that remain are still under threat. The District government has proposed cutting funding for the Access to Justice Program even further several times. The proposed cuts would affect funding for grants to legal services providers, the Community Legal Interpreter Bank (which helps individuals with limited English proficiency navigate the legal system), and the Poverty Lawyer Loan Repayment Assistance Program (which helps legal services providers recruit and retain high-quality staff attorneys.) Although the Mayor has proposed level funding for Fiscal Year 2012, the possibility of future cuts remains significant and the effect would be harsh.

In part to stem the loss of critical funding for civil legal services, the Court of Appeals amended the IOLTA rules in July 2010 to make participation in the IOLTA program mandatory for most D.C. Bar members who receive IOLTA-eligible funds.⁴ The amendment took effect in August 2010. That change demonstrated the Court's commitment to protecting access to justice despite the economic downturn. The proposed amendment to Comment [5] is another powerful way to further realize that commitment.

Role of Comment [5] on Rule 6.1

Rule 6.1 recognizes that every member of this Bar, practicing or non-practicing, in solo or firm practice, in government, in public interest, in academia, or otherwise, has an obligation to serve or facilitate the service of people in poverty who cannot afford a lawyer. The rule does not impose any special burden upon D.C. Bar members; it simply lists three alternative means to satisfy the aspirational goal of the Rule: that attorneys either take a court appointment, devote a certain number of hours to pro bono work, or give financial support to a legal assistance organization. The rule itself does not specify an amount. Comment [5] currently suggests \$400 annually, but less if that amount is greater than 1% of an attorney's earned income.

The amendment's purpose is not to create a hardship for attorneys who cannot afford additional financial contributions, but rather to encourage those who can afford to give more to do so. It is simply an update of a figure almost fifteen years out of date.

³ Report of the District of Columbia Committee on Public Safety and the Judiciary on the Support of Civil Legal Services for Low-Income Residents and Underserved Communities in the District of Columbia, May 13, 2010, at 5-8, *available at* http://www.dccouncil.us/mendelson/archive_pr/CPSJ%20Report%20on%20Support%20for%20Civil%20Legal%20Services%20-%20205.13.10.pdf.

⁴ *See* Letter from Chief Judge Eric T. Washington re: Changes to the Rules Governing the D.C. Interest on Lawyers' Trust Account (IOLTA) Program, July 1, 2010, *available at* http://www.dcb.org/inside_the_bar/bar_news/download.cfml?filename=iolta_judgeletter.

The proposed amendment to Comment [5] of Rule 6.1 reflects the drastically increased need for legal services providers in light of the recession and the decreased availability of resources to help meet that need. The proposed amendment has the potential to substantially improve service providers' ability to meet this vast need and would not impose any onerous burdens upon members of the Bar. Therefore, we urge the Court to adopt this amendment and raise the suggested financial contribution from \$400 to \$750.

Sincerely,

Eric Angel
Executive Director

John C. Keeney, Jr.
Director, Barbara McDowell Appellate Advocacy Project

Monica C. Bell
Liman Fellow
Legal Aid Society of the District of Columbia