

April 8, 2005

Mr. Thomas A. Edmonds  
Executive Director  
Virginia State Bar  
707 East Main Street, Suite 1500  
Richmond, VA 23219-2800

RE: Proposed Amendments to Rules 1.2 & 4.2 of the Rules of Professional Conduct and Rule 1:5 of the Rules of the Supreme Court of Virginia

Dear Mr. Edmonds:

HALT—An Organization of Americans for Legal Reform is a national 50,000-member advocacy group working towards greater accessibility and accountability in the civil justice system. HALT would like to add its support to the proposed amendments to Rules 1.2 and 4.2 of the Rules of Professional Conduct and Rule 1:5 of the Rules of the Supreme Court of Virginia.

Given the large number of people who cannot afford a lawyer, improving services for the self-represented is an important component of improving access to the legal system. In domestic relations cases, according to a 1992 study by the National Center for State Courts, 71 percent of all cases had at least one unrepresented party. A 1995 California study found that at least one party appeared *pro se* in two-thirds of all domestic relations cases. And these numbers are rising. At a 1999 National Conference on *Pro Se* Litigation, almost all (95%) of the participating courts reported an increase in the number of *pro se* litigants. In transactional matters, the need for assistance is even greater, resulting in large numbers of people unprotected by important life planning documents such as wills and health-care directives.

The legal system must do something to help the enormous number of people with everyday legal matters who cannot afford an attorney. Allowing attorneys to engage in unbundled legal services is an important step toward improving access to the legal system. The proposed new rules will not only give consumers access to unbundled services, but contains measures to protect them when they receive these services. Most important, the requirement in Rule 1.2(b) that a lawyer disclose the risks and benefits of limited representation before entering into an agreement to do so will allow consumers to make an informed decision about the arrangement. This protection is enhanced by the requirement in Comment [5] that limited scope agreements be memorialized in writing whenever practical (which, barring extreme extenuating circumstances, should be in all instances). Rule 1.2(c) also expands access to the legal system while protecting consumers of legal services, as it allows lawyers to prepare pleadings for *pro se* litigants without absolving them of the duty of competence that lawyers can evade when “ghostwriting” of pleadings is transacted on the gray market.

Allowing unbundled services is a win-win scenario for lawyers and consumers of legal services. Consumers gain the ability to tailor the amount and type of legal assistance they receive to their particular legal needs and financial ability. Lawyers receive clarification of what had been ambiguous ethical guidelines in this area. They also stand to benefit financially as a result of being able to offer unbundled services to clients who might have been unable to engage their services for an entire case, but who can afford to hire them to prepare pleadings.

While there are other steps that Virginia can undertake to further improve access to the legal system for those without lawyers<sup>1</sup>, the rule change being considered by the Virginia State Bar Council is an important step towards full access to the legal system for all Virginians. HALT urges the Council to approve the proposed amendments as written.

Sincerely,

Thomas M. Gordon  
Senior Counsel

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<sup>1</sup> Most notably, the state should raise its \$2,000 ceiling for small claims courts cases—the third-lowest such limit in the country—to a level that allows Virginians to resolve more everyday disputes without an attorney. Also, the state should allow consumers to use legal document preparers, who can provide competent, cost-effective completion of documents such as wills and uncontested divorce pleadings.