**RULES OF PROFESSIONAL CONDUCT**

**FUNDAMENTAL PRINCIPLES OF PROFESSIONAL CONDUCT[[1]](#footnote-1)\***

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. To understand this role, lawyers must comprehend the components of our legal system, and the interplay between the different types of professionals within that system. To fulfill this role lawyers must understand their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation ~~which~~ that a lawyer may encounter can be foreseen, but fundamental ethical principles are always present as guidelines. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

The Rules of Professional Conduct point the way to the aspiring lawyer and provide standards by which to judge the transgressor. Each lawyer must find within ~~his or her~~ their own conscience the touchstone against which to test the extent to which ~~his or her~~ their actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the legal profession and the society ~~which~~ that the lawyer serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

**RPC 1.0B**

**ADDITIONAL WASHINGTON TERMINOLOGY**

(a)-(c) [Unchanged.]

(d) “Limited Practice Officer” or “LPO” denotes a person licensed in accordance with the procedures set forth in APR 12 and who has maintained his or her their certification in accordance with the rules and regulations of the Limited Practice Board.

(e) [Unchanged.]

**Washington Comments (1-3)**

[1]-[3] [Unchanged.]

**RPC 1.2**

**SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

**(a)-(f)** [Unchanged.]

Comment

[1]-[13] [Unchanged.]

**Additional Washington Comments (14-17)**

[14]-[15] [Unchanged.]

[16] If a lawyer is unsure of the extent of his or her their authority to represent a person because of that person’s diminished capacity, para­graph (f) of this Rule does not prohibit the lawyer from taking action in accordance with Rule 1.14 to protect the person’s interests. Protective action taken in conformity with Rule 1.14 does not constitute a violation of this Rule.

[17]-[18] [Unchanged.]

**RPC 1.6**

**CONFIDENTIALITY OF INFORMATION**

**(a)**-**(c)** [Unchanged.]

Comments

[1]-[20] [Unchanged.]

**Additional Washington Comments (21-28)**

[21]-[27] [Unchanged.]

*Other*

[28] This Rule does not relieve a lawyer of his or her their obligations under Rule 5.4(b) of the Rules for Enforcement of Lawyer Conduct.

**RPC 1.8**

**CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES**

**(a)**-**(m)** [Unchanged.]

Comment

[1]-[13] [Unchanged.]

*Limiting Liability and Settling Malpractice Claims*

[14] **[Washington revision]** Agreements prospectively limiting a lawyer’s liability for malpractice are prohibited unless permitted by law and the client is independently represented by a lawyer in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the abil­ity of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her their own conduct and the firm complies with any conditions required by law, such as provisions requiring client notifica­tion or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15]-[20] [Unchanged.]

**Additional Washington Comments (21-31)**

[21]-[23] [Unchanged.]

*Personal Relationships*

[24] Model Rule 1.8 does not contain a provision equivalent to para­graph (*l*) of Washington’s Rule. Paragraph (*l*) prohibits representations based on a lawyer’s personal conflict arising from his or her their rela­tionship with another lawyer. Paragraph (*l*) is a revised version of former Washington RPC 1.8(i). See also Comment [11] to Rule 1.7.

[25]-[31] [Unchanged.]

**RPC 1.10**

**IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE**

**(a)-(d)** [Unchanged.]

**(e)** When the prohibition on representation under para­graph (a) is based on Rule 1.9(a) or (b), and arises out of the disqualified lawyer’s association with a prior firm, no other lawyer in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified unless:

(1)-(2) [Unchanged.]

(3) the firm is able to demonstrate by convincing evidence that no material information relating to the former repre­sentation was transmitted by the personally disqualified lawyer before implementation of the screening mechanism and notice to the former client.

Any presumption that information protected by Rules 1.6 and 1.9(c) has been or will be transmitted may be rebutted if the personally disqualified lawyer serves on his or her their former law firm and former client an affidavit attest­ing that the personally disqualified lawyer will not partici­pate in the matter and will not discuss the matter or the representation with any other lawyer or employee of his or her their current law firm, and attesting that during the period of the lawyer’s personal disqualification those law­yers or employees who do participate in the matter will be apprised that the personally disqualified lawyer is screened from participating in or discussing the matter. Such affida­vit shall describe the procedures being used effectively to screen the personally disqualified lawyer. Upon request of the former client, such affidavit shall be updated periodi­cally to show actual compliance with the screening proce­dures. The law firm, the personally disqualified lawyer, or the former client may seek judicial review in a court of gen­eral jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.

**(f)** [Unchanged.]

Comment

[1]-[8] [Unchanged.]

**Additional Washington Comments [9-15]**

[9] [Unchanged.]

[10] Washington’s RPC 1.10 was amended in 1993 to permit represen­tation with screening under certain circumstances. Rule 1.10(e) retains the screening mechanism adopted as Washington RPC 1.10(b) in 1993, thus allowing a firm to represent a client with whom a lawyer in the firm has a conflict based on his or her their association with a prior firm if the lawyer is effectively screened from participation in the representation, is apportioned no part of the fee earned from the representation, and the client of the former firm receives notice of the conflict and the screening mechanism. However, prior to undertaking the representation, non-dis­qualified firm members must evaluate the firm’s ability to provide com­petent representation even if the disqualified member can be screened in accordance with this Rule. While Rule 1.10 does not specify the screening mechanism to be used, the law firm must be able to demonstrate that it is adequate to prevent the personally disqualified lawyer from receiv­ing or transmitting any confidential information or from participating in the representation in any way. The screening mechanism must be in place over the life of the representation at issue and is subject to judicial review at the request of any of the affected clients, law firms, or lawyers. However, a lawyer or law firm may rebut the presumption that informa­tion relating to the representation has been transmitted by serving an affidavit describing the screening mechanism and affirming that the re­quirements of the Rule have been met.

[11]-[15] [Unchanged.]

**RPC 1.13**

**ORGANIZATION AS CLIENT**

**(a)**-**(d)** [Unchanged.]

**(e)** A lawyer who reasonably believes that he or she has they have been discharged because of the lawyer’s actions taken pursuant to paragraphs (b) and (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization’s highest authority is informed of the law­yer’s discharge or withdrawal.

**(f)**-**(h)** [Unchanged.]

Comment

[1]-[7] [Unchanged.]

[8] A lawyer who reasonably believes that he or she has they have been discharged because of the lawyer’s actions taken pursuant to para­graph (b) or (c), or who withdraws in circumstances that require or per­mit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization’s highest authority is informed of the lawyer’s discharge or withdrawal.

[9]-[14] [Unchanged.]

**Additional Washington Comments [15-16]**

[15]-[16] [Unchanged.]

**RPC 1.14**

**CLIENT WITH DIMINISHED CAPACITY**

**(a)**-**(c)** [Unchanged.]

Comments

[1]-[9] [Unchanged.]

[10] **[Washington revision]** A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the con­fidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other legal practitioner involved the nature of his or her their relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

**RPC 1.18**

**DUTIES TO PROSPECTIVE CLIENT**

**(a)-(e)** [Unchanged.]

Comment

[1]-[9] [Unchanged.]

**Additional Washington Comments (10-13)**

[10]-[12] [Unchanged.]

[13] Pursuant to statute or other law, government officers and employ­ees may be entitled to defense and indemnification by the government. In these circumstances, a government lawyer may find it necessary to obtain information from a government officer or employee to determine if he or she they meets the criteria for representation and indemnification. In this situation, the government lawyer is acting on behalf of the gov­ernment entity as the client, and this Rule would not apply. The govern­ment lawyer shall comply with Rule 4.3 in obtaining such information.

**RPC 4.2**

**COMMUNICATION WITH PERSON REPRESENTED BY A LAWYER**

[Unchanged.]

**Comment**

[1]-[6] [Unchanged.]

[7] **[Washington revision]** In the case of a represented organization, this Rule prohibits communications with a constituent of the organiza­tion who supervises, directs, or regularly consults with the organization’s lawyer concerning the matter or has authority to obligate the organi­zation with respect to the matter. Consent of the organization’s lawyer is not required for communication with a former constituent. If a con­stituent of the organization is represented in the matter by his or her their own lawyer, the consent by that lawyer to a communication will be sufficient for purposes of this Rule. In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8]-[9] [Unchanged.]

**Additional Washington Comments (10-12)**

[10] [Unchanged.]

[11] **[Washington revision]** A person not otherwise represented by a lawyer to whom limited representation is being provided or has been pro­vided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is they are to communi­cate only with the limited representation lawyer as to the subject matter within the limited scope of the representation. (The provisions of this Comment were taken from former Washington RPC 4.2(b)).

[12] [Unchanged.]

**RPC 4.3**

**DEALING WITH PERSON NOT REPRESENTED BY A LAWYER**

[Unchanged.]

Comment

[1]-[2] [Unchanged.]

**Additional Washington Comments (3-6)**

[3] An otherwise unrepresented person to whom limited representa­tion is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is they are to communicate only with the limited repre­sentation lawyer as to the subject matter within the limited scope of the representation. (The provisions of this Comment were taken from former Washington RPC 4.3(b)).

[4]-[6] [Unchanged.]

**RPC 6.1**

**PRO BONO PUBLICO SERVICE**

Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay. A lawyer should aspire to render at least thirty (30) hours of pro bono publico service per year. In fulfilling this responsi­bility, the lawyers should:

**(a)**-**(b)** [Unchanged.]

Comment

[1] [**Washington revision**] Every lawyer, regardless of professional prominence or professional work load workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her their legal career, each law­yer should render on average per year, at a minimum, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as postconvic­tion death penalty appeal cases.

[2]-[12] [Unchanged.]

**Additional Washington Comments (13-16)**

[13]-[16] [Unchanged.]

**RPC 8.4**

**MISCONDUCT**

It is professional misconduct for a lawyer to:

**(a)**-**(h)** [Unchanged.]

**(i)** commit any act involving moral turpitude, or corrup­tion, or any unjustified act of assault or other act which that reflects disregard for the rule of law, whether the same be committed in the course of his or her their conduct as a law­yer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commence­ment of a disciplinary proceeding;

**(j)** willfully disobey or violate a court order directing him or her them to do or cease doing an act which that he or she they ought in good faith to do or forbear;

**(k)** violate his or her their oath as an attorney;

**(*l*)**-**(n)** [Unchanged.]

Comment

[1]-[5] [Unchanged.]

**Additional Washington Comments (6-8)**

[6]-[8] [Unchanged.]

**RPC 8.5**

**DISCIPLINARY AUTHORITY; CHOICE OF LAW**

**(a)-(b)** [Unchanged.]

**(c) Disciplinary Authority Over Judges.** Notwithstanding the provisions of Rule 8.4(m), a lawyer, while serv­ing as a judge or justice as defined in RCW 2.64.010, shall not be subject to the disciplinary authority provided for in these Rules or the Rules for Enforcement of Lawyer Con­duct for acts performed in his or her their judicial capacity or as a candidate for judicial office unless judicial discipline is imposed for that conduct by the Commission on Judi­cial Conduct or the Supreme Court. Disciplinary authority should not be exercised for the identical conduct if the viola­tion of the Code of Judicial Conduct pertains to the role of the judiciary and does not relate to the judge’s or justice’s fitness to practice law.

Comment

[1]-[7] [Unchanged.]

**Additional Washington Comments (8-13)**

[8]-[9] [Unchanged.]

[10] Paragraph (c) does not prevent the exercise of disciplinary author­ity over (1) a judge or justice after he or she has they have been disciplined for judicial misconduct by the Commission on Judicial Conduct or the Supreme Court, (2) a former judge or justice, or (3) a lawyer who serves as a pro tem or part-time judge for acts performed by him or her them as a lawyer and otherwise outside of his or her their judicial capacity.

[11]-[13] [Unchanged.]

1. \* These Fundamental Principles of the Rules of Professional Conduct are taken from the former Preamble to the Rules of Professional Conduct as approved and adopted by the Supreme Court in 1985. Washington lawyers and judges have looked to the 1985 Preamble as a statement of our overarching aspiration to faithfully serve the best interests of the public, the legal system, and the efficient administration of justice. The former Preamble is preserved here to inspire lawyers to strive for the highest possible degree of ethical conduct, and these Fundamental Principles should inform many of our decisions as lawyers. The Fundamental Principles do not, however, alter any of the obligations expressly set forth in the Rules of Professional Conduct, nor are they intended to affect in any way the manner in which the Rules are to be interpreted or applied. [↑](#footnote-ref-1)