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Subject: Comment on proposed amendment to RPC 1.7
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Attachments: [RPC 1.0B 1.7 1.10 1.13 1583.doc](#)
[AG Proposed Additon to Comment 42 to RPC 1.7.docx](#)

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Dear Clerk of the Supreme Court,

On behalf of the Attorney General's Office, I am submitting a proposed amendment to comment 42 to RPC 1.7. I have attached here the proposed rule change that the Court is considering, plus our Office's suggested revision to the comment (shown in bold). We have no objection to the proposed rule change to RPC 1.7 clarifying the conflict rules for public sector attorneys, but we think it is important to clarify that prior to this amendment, public sector lawyers did not violate the RPCs by representing multiple public clients. Especially for attorneys within the AG's office, case law made that very clear, and we would prefer to avoid an implication that public attorneys might have been violating the RPCs previously. Please let us know if you have any questions about our suggested amendment to the comments or if we can provide anything else.

Sincerely,

Noah Guzzo Purcell

Solicitor General

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RPC 1.0B

ADDITIONAL WASHINGTON TERMINOLOGY

(a)-(e) [Unchanged.]

(f) "Government Entity" denotes the United States of America, the State of Washington, and any political subdivision or municipal corporation of the State.

Washington Comments (1-3)

[1]-[3] [Unchanged.]

RPC 1.7

CONFLICT OF INTEREST: CURRENT CLIENTS

(a)-(b) [Unchanged.]

(c) A lawyer who is a public officer or employee shall not be in violation of this rule when that lawyer represents more than one agency, branch, or unit, or subdivision within a government entity, and/or officer or employee within that government entity, if the lawyer reasonably believes that the multiple representations are required or allowed by constitutional or statutory provisions or by other applicable law.

Comments

General Principles

[1]-[5] [Unchanged.]

Identifying Conflicts of Interest: Directly Adverse

[6]-[7] [Unchanged.]

Identifying Conflicts of Interest: Material Limitation

[8] [Unchanged.]

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] [Unchanged.]

Personal Interest Conflicts

[10]-[12] [Unchanged.]

Interest of Person Paying for a Lawyer's Service

[13] [Unchanged.]

Prohibited Representations

[14]-[17] [Unchanged.]

Informed Consent

[18]-[19] [Unchanged.]

Consent Confirmed in Writing

[20] [Unchanged.]

Revoking Consent

[21] [Unchanged.]

Consent to Future Conflict

[22] [Unchanged.]

Conflicts in Litigation

[23]-[25] [Unchanged.]

Nonlitigation Conflicts

[26]-[28] [Unchanged.]

Special Considerations in Common Representation

[29]-[33] [Unchanged.]

Organizational Clients

[34]-[35] [Unchanged.]

Additional Washington Comments (31-4142)

General Principles

[36] [Unchanged.]

Identifying Conflicts of Interest: Material Limitation

[37] [Unchanged.]

Prohibited Representations

[38] [Unchanged.]

Informed Consent

[39] [Unchanged.]

Nonlitigation Conflicts

[40] [Unchanged.]

Special Considerations in Internal Government ~~Common~~ Representations

[41] [Unchanged.]

[42] A client within a government entity may be a specific agency, a branch of government, another unit or subdivision of that government, or an individual government officer or employee. See Rule 1.13 Comment [9] and Rule 1.11 Comment [5]. Lawyers who are public officers or employees may be authorized or required to represent different adverse government agencies, branches, units, subdivisions, or individuals in intragovernmental legal controversies where a private lawyer could not represent multiple private clients. See Scope Comment [18]. Consistent with applicable Washington law, lawyers within a government may represent intragovernmental agencies, branches, units, subdivisions, and officers and employees including former officers or employees, with conflicting or potentially conflicting interests. When the representation of an agency, branch, unit, subdivision, or officer or employee appears to be directly adverse to another governmental agency, branch, unit, subdivision, or officer or employee, or former officer or employee, and particularly when there is adverse representation in litigation or before a tribunal, the multiple representations may require informed consent from various agencies, branches, units or subdivisions, and/or an effective screening mechanism among the lawyers or the engagement of one or more lawyers who are not officers or employees of that government.

IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) Except as provided in paragraph (e) and in Rule 1.7(c) with respect to a lawyer who is a public officer or employee of a government entity, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b)-(f) [Unchanged.]

Comments

Definition of “Firm”

[1] [Unchanged.]

Principles of Imputed Disqualification

[2]-[8] [Unchanged.]

Additional Washington Comments [9-15]

Principles of Imputed Disqualification

[9]-[15] [Unchanged.]

RPC 1.13

ORGANIZATION AS CLIENT

(a)-(h) [Unchanged.]

Comments

The Entity as the Client

[1]-[5] [Unchanged.]

Relation to Other Rules

[6]-[8] [Unchanged.]

Government Agency

[9] **Washington Revision** The duty defined in this ~~R~~rule applies to lawyers representing governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these ~~R~~rules. See Scope [18]. Although in some circumstances the client may be a specific government agency, unit, subdivision, or it may also be a branch of government, such as the executive branch, or it may also be the government entity as a whole. For example, if the action or failure to act involves the head of a government unit bureau, either the department of which the unit bureau is a part or the relevant branch of government entity may be the client for purposes of this ~~R~~rule. Moreover, in a matter involving the conduct of government officials, a ~~government~~ lawyer who is a public officer or employee may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers who are public officers or employees, employed by the government or lawyers in military service, may be defined by statutes and regulation. This ~~R~~rule does not limit that authority. See Scope. See also Rule 1.7(c), permitting a lawyer who is a public officer or employee to represent more than one government agency, branch, unit, or subdivision, and officers and employees including former officers or employees of that government, if the lawyer reasonably believes that the multiple representations are required or allowed by constitutional or statutory provisions, or by other applicable law.

Clarifying the Lawyer's Role

[10]-[11] [Unchanged.]

Dual Representation

[12] [Unchanged.]

Derivative Actions

[13]-[14] [Unchanged.]

Additional Washington Comments [15-16]

[15]-[16] [Unchanged.]

[42] RPC 1.7(c) merely codifies established practice that lawyers who are public officers or employees when they represent multiple agencies have the authority to represent multiple agencies and does not imply that prior to its adoption that lawyers representing multiple governmental entities violated the Rules of Professional Conduct relating to conflicts. A client within a government entity may be a specific agency, a branch of government, another unit or subdivision of that government, or an individual government officer or employee. See Rule 1.13 Comment [9] and Rule 1.11 Comment [5]. Lawyers who are public officers or employees may be authorized or required to represent different adverse government agencies, branches, units, subdivisions, or individuals in intragovernmental legal controversies where a private lawyer could not represent multiple private clients. See Scope Comment [18]. Consistent with applicable Washington law, lawyers within a government may represent intragovernmental agencies, branches, units, subdivisions, and officers and employees including former officers or employees, with conflicting or potentially conflicting interests. When the representation of an agency, branch, unit, subdivision, or officer or employee appears to be directly adverse to another governmental agency, branch, unit, subdivision, or officer or employee, or former officer or employee, and particularly when there is adverse representation in litigation or before a tribunal, the multiple representations may require informed consent from various agencies, branches, units or subdivisions, and/or an effective screening mechanism among the lawyers or the engagement of one or more lawyers who are not officers or employees of that government.