

April 28, 2025

SUBMITTED VIA EMAIL [supreme@courts.wa.gov]

Hon. Sarah R. Pendleton
Clerk of the Court
Washington Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: Proposed amendments to Rules of Professional Conduct (RPC) 1.0B, 1.7,
1.10 and 1.13

Dear Ms. Pendleton:

On behalf of the Washington State Association of Municipal Attorneys (WSAMA), I would like to comment on the amendment to RPC 1.7(c) and related Rules proposed by the Washington State Bar Association's Committee on Professional Ethics.¹

WSAMA supports the proposal in concept, which would allow in-house government lawyers to reasonably rely on local and state law to inform potential or perceived conflicts among the components and people who make up the government entities they serve. This would conform the RPCs to Washington practice in a way that enhances clarity.

We mostly offer friendly stylistic amendments to enhance consistency, including to RPC 1.11, which the WSBA's proposal omits. Because we are among those most likely to rely on these amendments, and given our professional inclination toward drafting clear code text, we would prefer this language to be as clear and consistent as possible.

Our one substantive suggestion is to add a sentence to the new Comment 42 to RPC 1.7: "Nothing in this Rule is intended to alter Washington law regarding whether an agency, branch, unit, or subdivision of a governmental entity is an independent legal entity." This is to dispel any suggestion that, by focusing on a government agency, branch, unit, or subdivision as a client, the Rule assumes that it is an entity legally distinct from the larger government entity. *See, e.g., City of Seattle ex rel. Dunbar v. Dutton*, 147 Wash. 224, 226, 265 P. 729 (1928); *Nolan v. Snohomish County*, 59 Wn. App. 876, 883, 802 P.2d 792 (1990).

¹ The GR 9 cover sheet for that proposal states that "[t]he language changes were initially suggested by" WSAMA. Any suggestion that we drafted this proposal would be inaccurate. At the request of WSAMA member Hugh Spitzer, the WSAMA Board submitted a letter to the Committee on Professional Ethics in 2022 stating only that the Board "believes it would be helpful to conform RPC 1.7 to Washington practice in a way that enhances clarity for in-house government lawyers and heads off grievances filed against them," adding that the Board "takes no position on any proposed amendment." The Board took no action on the proposed text.

Hon. Sarah R. Pendleton
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Please find attached a redlined version of the proposal, with comments explaining our reason for each suggested edit, and a “clean” version showing how we would prefer to cast the proposed amendments if you were to adopt our suggestions.

Thank you for your attention to this matter. Please let me know if you have any questions about WSAMA’s position.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ann Marie Soto', with a stylized, flowing script.

Ann Marie Soto
WSAMA President

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.

Commented [A1]: The definitions are alphabetical. "Government entity" should be the new (b) and the rest relettered accordingly.

Commented [A2]: Like "legal practitioner," "government entity" is not used with initial caps later, so "entity" should not be capitalized.

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 (including a former officer or employee) within that a 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.

Commented [A3]: RPC 1.7 capitalizes this word.

Commented [A4]: This proposal conveys this concept inconsistently. Use consistent terminology.

Commented [A5]: Unlike the comment, the rule does not expressly include former officers or employees. We propose conforming the rule to the comment for consistency.

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-~~41~~42)

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 entity 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, ~~or former 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~~, ~~officers~~, ~~or employees~~, or former officers or employees; ~~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

Commented [A6]: The applicable law could be local, including from a city charter or code. Best to leave this term as broad as "other applicable law" in the proposed RPC 1.7(c).

Commented [A7]: Use the defined term.

Commented [A8]: Consistency.

Commented [A9]: Serial comma. Same throughout.

Commented [A10]: The second part of this sentence mentions former officers or employees, so this part should too.

Commented [A11]: If "governmental" does not appear before "agency" at the start of this sentence, it should not here either.

Commented [A12]: Use a comma and semicolon to help the reader identify what appear to be the three options (informed consent, screening, or outside counsel).

Commented [A13]: Language consistency.

government entity. Nothing in this Rule is intended to alter Washington law regarding whether an agency, branch, unit, or subdivision of a governmental entity is an independent legal entity.

Commented [A14]: Defined term.

Commented [A15]: This is to dispel any suggestion that, by focusing on an agency, branch, unit, or subdivision as a client, the Rule assumes that it is an entity legally distinct from the government entity.

RPC 1.10

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 1.11

SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) – (c) [Unchanged.]

Commented [A16]: NEW LANGUAGE; The Court should consider amending this comment even though not included in the WSBA proposal. Because Comment 5 uses "government agency," which will create confusion after the addition of the definition of "government entity," Comment 5 should use "government entity." As an aid to the reader hunting for a rule on intragovernmental conflicts, it should also cross-reference new Comment 42 to Rule 1.7.

Comments

[1] – [4] [Unchanged.]

[5] **[Washington Revision]** When a lawyer has been employed by one government ~~agency~~entity and then moves to a second government ~~agency~~entity, it may be appropriate to treat that second ~~agency~~entity as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter ~~agency~~entity is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government ~~agencies~~entities should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rules 1.7, Comment [42] and 1.13, Comment [9].

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 ~~entities~~. 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~~

Commented [A17]: "Rule" is capitalized throughout RPC 1.13 and should remain so throughout this comment.

Commented [A18]: Use the defined term.

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be a branch of government, such as the executive branch, agency, branch, unit, subdivision, officer, or employee (including a former officer or employee) within a government entity, 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 the government entity may be the client for purposes of this R+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 entity ~~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+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.]

Commented [A19]: First, as amended, this sentence would just be a clause starting with "although." Second, it would be best to use the same terminology employed in proposed RPC 1.7(c).

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Commented [A20]: If adding "who are public officers or employees," then "employed by the government" is redundant or confusing.

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Commented [A21]: It would be best to delete this clause. As a general matter, a cross-reference should avoid summarizing the referenced provision because, as in this draft, the initial description might vary from the referenced provision and any future amendments to the referenced provision are unlikely to be reflected in the description in the cross-reference. If the Court retains this description, it should read: "permitting a lawyer who is a public officer or employee to represent more than one agency, branch, unit, subdivision, officers, or employees within a 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."

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

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(a)-(b) [Unchanged.]

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Comments

General Principles

[1]-[5] [Unchanged.]

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Organizational Clients

[34]-[35] [Unchanged.]

Additional Washington Comments (31-4142)

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[36] [Unchanged.]

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alter Washington law regarding whether an agency, branch, unit, or subdivision of a governmental entity is an independent legal entity.

RPC 1.10

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

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Additional Washington Comments [9-15]

Principles of Imputed Disqualification

[9]-[15] [Unchanged.]

RPC 1.11

SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) – (e) [Unchanged.]

Comments

[1] – [4] [Unchanged.]

[5] **Washington Revision** When a lawyer has been employed by one government ~~agency~~entity and then moves to a second government ~~agency~~entity, it may be appropriate to treat that second ~~agency~~entity as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter ~~agency~~entity is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government ~~agencies~~entities should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rules 1.7, Comment [42] and 1.13, Comment [9].

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 Rule applies to lawyers representing governmental organizations entities. 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 Rules. See Scope [18]. ~~Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive~~

~~branch, agency, branch, unit, subdivision, officer, or employee (including a former officer or employee)~~ within a government entity, 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 the government entity may be the client for purposes of this 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 ~~entity~~ 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 Rule does not limit that authority. See Scope. See also Rule 1.7(c).

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.]

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Farino, Amber](#)
Subject: FW: WSAMA Response to Proposed RPC 1.7 Amendment
Date: Monday, April 28, 2025 8:35:36 AM
Attachments: [WSAMA Response to Proposed Amendment to RPC 1.7.pdf](#)

From: Ann Marie Soto <annmarie@madronalaw.com>
Sent: Monday, April 28, 2025 7:51 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: WSAMA Secretary-Treasurer <secretarytreasurer@wsama.org>; Casparian, Debra (Legal) <dcasparian@cityoftacoma.org>; Jeffrey Taraday <jeff@lighthouselawgroup.com>
Subject: WSAMA Response to Proposed RPC 1.7 Amendment

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Good morning –

Please find attached the Washington State Association of Municipal Attorneys' response to the proposed amendment to RPC 1.7. Thank you.

Ann Marie J. Soto
WSAMA Board President



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