

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED)
AMENDMENTS TO RPC 1.5—FEES; RPC 5.4—)
PROFESSIONAL INDEPENDENCE OF A)
LAWYER; AND RPC 7.3—SOLICITATION OF)
CLIENTS)
_____)

ORDER

NO. 25700-A-1524

The Washington State Bar Association’s Committee on Professional Ethics, having recommended the suggested amendments to RPC 1.5—Fees; RPC 5.4—Professional Independence of a Lawyer; and RPC 7.3—Solicitation of Clients, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2024.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2024. Comments may be sent to the following

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ORDER

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO RPC 1.5—FEES; RPC 5.4—
PROFESSIONAL INDEPENDENCE OF A LAWYER; AND RPC 7.3—SOLICITATION OF
CLIENTS

addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov.

Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 8th day of June, 2023.

For the Court


González, C.J.

EXHIBIT A
SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

TITLE 7 – INFORMATION ABOUT LEGAL SERVICES

1 **RPC 7.3 SOLICITATION OF CLIENTS**

2 (a) A lawyer may solicit professional employment unless:

3 (1) the solicitation is false or misleading;

4 (2) the lawyer knows or reasonably should know that the physical,
5 emotional, or mental state of the subject of the solicitation is such that the person
6 could not exercise reasonable judgment in employing a lawyer;

7 (3) the subject of the solicitation has made known to the lawyer a desire
8 not to be solicited by the lawyer; or

9 (4) the solicitation involves coercion, duress, or harassment.

10 (b) A lawyer shall not compensate, or give or promise anything of value to, a
11 person who is not an employee or lawyer in the same law firm for the purpose of
12 recommending or securing the services of the lawyer or law firm, except that a
13 lawyer may:

14 (1) pay the reasonable cost of advertisements or communications
15 permitted by RPC 7.1, including online group advertising;

16 (2) pay the usual charges of a legal service plan or a not-for-profit lawyer
17 referral service and share a fee with a not-for-profit lawyer referral service that
18 qualifies under Section 501 of the Internal Revenue Code or Washington's
19 Nonprofit Corporation Act, or is a program sponsored by a non-profit organization
20 or a court as authorized under Rule 6.5(a);

21 (3) pay for a law practice in accordance with RPC 1.17;

22 (4) refer clients to another lawyer or LLLT or other nonlawyer professional
23 pursuant to an agreement not otherwise prohibited under these Rules that
24 provides for the other person to refer clients or customers to the lawyer, if:

25 (i) the reciprocal referral agreement is not exclusive, and

26 (ii) the client is informed of the existence and nature of the agreement;

EXHIBIT A
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TITLE 7 – INFORMATION ABOUT LEGAL SERVICES

1 (5) give nominal gifts that are neither intended nor reasonably expected
2 to be a form of compensation for recommending a lawyer’s services.

3 (c) [Reserved.]

4 (d) [Reserved.]

5
6 **Additional Washington Comments (10-16)**

7 [15] A lawyer may pay the usual charges of a legal service plan or a not-for-profit
8 lawyer referral service. A “legal service plan” is a prepaid or group legal service
9 plan or a similar delivery system that assists people who seek to secure legal
10 representation. A “lawyer referral service,” on the other hand, is any individual or
11 entity that operates for the direct or indirect purpose of referring potential clients
12 to lawyers, regardless of whether the term “referral service” is used. The “usual
13 charges” of a legal service plan or not-for-profit lawyer referral service are fees
14 that are openly promulgated and uniformly applied. Not-for-profit lawyer referral
15 services are understood by the public to be consumer-oriented organizations that
16 provide unbiased referrals to lawyers with appropriate experience in the subject
17 matter of the representation and afford other client protections, such as complaint
18 procedures or malpractice insurance requirements. A lawyer also may share a
19 percentage of a fee in exchange for a referral from not-for-profit lawyer referral
20 services, because these services help to facilitate access to justice and, if they
21 operate under Section 501 of the Internal Revenue Code or the Washington
22 Nonprofit Corporation Act, the service will use the fee only to defray reasonable
23 operating costs. The fee paid by a client who is referred by the service, however,
24 should not exceed the total charges that the client would have paid if the lawyer
25 referral was not involved.
26

EXHIBIT B

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

TITLE 5 – LAW FIRMS AND ASSOCIATIONS

RPC 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

Additional Washington Comment (~~3-4~~ 3-5)

[3] Paragraph (a)(5) was taken from former Washington RPC 5.4(a)(2).

[4] Notwithstanding Rule 5.4, lawyers and LLLTs may share fees and form business structures to the extent permitted by Rule 5.9.

[5] For circumstances when a lawyer can share a fee with a not-for-profit lawyer referral service, see Rule 7.3(b)(2) and Comment 15.

EXHIBIT C

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

TITLE 1 – CLIENT LAWYER RELATIONSHIP

RPC 1.5 FEES

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) (i) The division is in proportion to the services provided by each lawyer or each lawyer assumes responsibility for the representation;

(ii) The client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(iii) The total fee is reasonable.

(2) ~~the division is between the lawyer and a duly authorized lawyer referral service of either the Washington State Bar Association or one of the county bar associates of this state.~~ The division of fees is allowed by RPC 7.3(b)(2).