

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

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A M E N D E D

O R D E R

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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AMENDED 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 26th day of December, 2023.

For the Court


CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendments to

RULES OF PROFESSIONAL CONDUCT (RPC)

Rules 1.5(e); 5.4; and 7.3

A. Proponent: Washington State Bar Association, Board of Governors, Committee on Professional Ethics

B. Spokespersons:

Daniel D. Clark, President, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

Terra Nevitt, Executive Director, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

Jeanne Marie Clavere, Senior Professional Responsibility Counsel, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

C. Purpose: Based on changes to the Model Rules of Professional Conduct, the amendments would permit lawyers to share a portion or percentage of a fee with lawyer referral services that have qualified for 501(c)(3) treatment under the Internal Revenue Code or are registered under the Washington State Nonprofit Corporation Act. This will serve the public by providing additional alternatives for referral services and practitioners.

Background

The issue of paying charges for a legal services plan or fee sharing with a lawyer referral service was analyzed by the Committee on Professional Ethics (CPE) in 2019-20. Based on the CPE's recommendation, the WSBA Board of Governors approved and subsequently submitted suggested amendments to the Washington State Supreme Court affecting RPCs 1.5(e), 5.4, and 7.2. The Washington State Supreme Court published the rules for comment on November 6, 2020. Exhibit D. However, while that proposal was pending, on January 8, 2021, the Washington State Supreme Court adopted sweeping revisions to RPC Title 7, concerning advertising and solicitation. Exhibit E.

When the Washington State Supreme Court adopted the 2021 amendments to RPC Title 7, it maintained in amended RPC 7.3(b)(2) and Comment 15 the preexisting

concept that a lawyer may pay the charges of a legal services plan or share a fee with certain lawyer referral services. However, the Washington State Supreme Court did not act on the WSBA Board of Governor's pending proposal to allow lawyers to share a *portion or percentage* of a fee with lawyer referral services that have qualified for 501(c)(3) treatment under the Internal Revenue Code or are registered under the Washington State Nonprofit Corporation Act. In light of the Title 7 amendments, the WSBA Board of Governors subsequently withdrew the 2020 proposal relating to fee sharing with lawyer referral services for further consideration.

The CPE continues to believe that such additional language would serve the public by providing additional alternatives for referral services and practitioners. Additionally, the 2021 revisions to RPC 7.3 did not address a confusing reference in RPC 1.5(e)(2) to "a duly authorized lawyer referral service of either the Washington State Bar Association" or one of the county bar associations of this state."

Recommendation

At their board meeting dated March 4, 2023, the WSBA Board of Governors approved the request by the Committee on Professional Ethics to submit these amendments to the Washington Supreme Court for consideration.

The suggested amendments are attached as Exhibits A-C. These amendments to the Rules of Professional Conduct are intended to clarify when a lawyer may pay the usual charges of a legal services plan or share a portion of a fee with a lawyer referral service. The rationale for such an amendment is that it would increase access to legal services since many lawyer referral services are not-for-profit entities which serve underrepresented populations, including populations with limited language proficiency.

Redline and clean versions of the suggested rules are attached for consideration.

D. Hearing: A hearing is not requested.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Material:

- Exhibit A: Suggested Amendments to RPC 7.3; redline and clean versions
- Exhibit B: Suggested Amendment to RPC 5.4, redline and clean versions
- Exhibit C: Suggested Amendment to RPC 1.5. redline and clean versions
- Exhibit D: Washington State Supreme Court Order No. 25700-A-1320 dated November 6, 2020
- Exhibit E: Washington State Supreme Court Order No 25700-A-1333 dated January 8, 2021

EXHIBIT A
SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

TITLE [7] – [INFORMATION ABOUT LEGAL SERVICES]

RPC [7.3] [SOLICITATION OF CLIENTS]

(a) A lawyer may solicit professional employment unless:

(1) the solicitation is false or misleading;

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

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

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

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

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

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

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

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

EXHIBIT A
SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

TITLE [7] – [INFORMATION ABOUT LEGAL SERVICES]

reciprocal referral agreement is not exclusive, and (ii) the client is informed of the existence and nature of the agreement;

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

(c) [Reserved.]

(d) [Reserved.]

Comment

[15] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A "legal service plan" is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A "lawyer referral service," on the other hand, is any individual or entity that operates for the direct or indirect purpose of referring potential clients to lawyers, regardless of whether the term "referral service" is used. The "usual charges" of a legal service plan or not-for-profit lawyer referral service are fees that are openly promulgated and uniformly applied. Not-for-profit lawyer referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. A lawyer also may share a fee, including a portion or percentage of a fee, in exchange for a referral from not-for-profit lawyer referral services, because these services help to facilitate access to justice and, if they operate under Section 501 of the Internal Revenue Code or the Washington Nonprofit Corporation Act, the service will use the fee only to defray reasonable operating costs. The fee paid by a client who is

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TITLE [7] – [INFORMATION ABOUT LEGAL SERVICES]

referred by the service, however, should not exceed the total charges that the client would have paid if the lawyer referral was not involved.

EXHIBIT B

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

TITLE [5] – [LAW FIRMS AND ASSOCIATIONS]

1 **RPC [5.4] [PROFESSIONAL INDEPENDENCE OF A LAWYER]**

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

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

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

6 [5] Notwithstanding Rule 5.4, there are circumstances when a lawyer
7 can share a fee with a not-for-profit lawyer referral service. See Rule 7.3(b)(2)
8 and Comment 15.

EXHIBIT C

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

TITLE [1] – [CLIENT LAWYER RELATIONSHIP]

1 **RPC [1.5] [FEES]**

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

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

6 (ii)(2) The client agrees to the arrangement, including the share each
7 lawyer will receive, and the agreement is confirmed in writing; and

8 (iii)(3) The total fee is reasonable.

9 ~~(2) the division is between the lawyer and a duly authorized lawyer~~
10 ~~referral service of either the Washington State Bar Association or one of the~~
11 ~~county bar associates of this state.~~