

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED)
AMENDMENTS TO RPC 1.0B—ADDITIONAL)
WASHINGTON TERMINOLOGY; RPC 1.7—)
CONFLICT OF INTEREST: CURRENT CLIENTS;)
RPC 1.10—IMPUTATION OF CONFLICT OF)
INTEREST: GENERAL RULE; AND RPC 1.13—)
ORGANIZATION AS CLIENT)
_____)
)
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ORDER

NO. 25700-A-1583

The Washington State Bar Association (WSBA), having recommended the suggested amendments to RPC 1.0B—Additional Washington Terminology; RPC 1.7—Conflict of Interest: Current Clients; RPC 1.10—Imputation of Conflict of Interest: General Rule; and RPC 1.13—Organization as Client, 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 2025.

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

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO RPC 1.0B—ADDITIONAL WASHINGTON TERMINOLOGY; RPC 1.7—CONFLICT OF INTEREST: CURRENT CLIENTS; RPC 1.10—IMPUTATION OF CONFLICT OF INTEREST: GENERAL RULE; AND RPC 1.13—ORGANIZATION AS CLIENT

(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, 2025. Comments may be sent to the following 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 11th day of July, 2024.

For the Court


González, C.J.

GR 9 COVER SHEET

Suggested Amendments RULES OF PROFESSIONAL CONDUCT (RPC) Rules 1.0B, 1.7, 1.10 and 1.13

Submitted by the Washington State Bar Association

A. Name of Proponent:

Washington State Bar Association, Committee on Professional Ethics

B. Spokesperson:

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C. Purpose:

These suggested revisions to the Rules of Professional Conduct are meant to address inconsistencies between RPC 1.7(a) and Washington court decisions on potential conflicts arising from lawyers in a government law office representing separate government agencies in adjudicated disputes.

These suggestions relate to situations in which lawyers in a single government law office—such as the Office of the Attorney General or a city attorney’s office—represent separate subdivisions of that government adverse to each other in litigation or other adjudicated disputes. RPC 1.7(a) states that “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.” Although RPC 1.7(b) allows clients to consent to certain conflicts of interest, RPC 1.7(b)(3) limits those waivers to situations where “the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.”

Notwithstanding the RPC 1.7(b)(3) ban on consents to conflicts in litigation, for at least 40 years the Washington State Supreme Court and the Court of Appeals have declined to disqualify lawyers from the Attorney General's Office or other government law offices when they represent different government officials or agencies in intra-governmental disputes. For example, in *Sammamish Community Municipal Corporation v. City of Bellevue*, Division I Court of Appeals Judge Joseph Coleman wrote:

Washington courts have recognized the 'difference between the relationship of a lawyer in a private law firm and a lawyer in a public law firm such as a prosecuting attorney, public defender, or attorney general' with respect to compliance with the conflict-of-interest rules. Thus, it is accepted practice for different attorneys within the same public office to represent different clients with conflicting or potentially conflicting interests, so long as an effective screening mechanism exists within the office sufficient to keep the clients' interests separate.

(References omitted.) See also, *Wash. Med. Disciplinary Bd. v. Johnston*, 99 Wn.2d 466, 480-81 (1983); *Amoss v. Univ. of Washington*, 40 Wn.App. 666 (1985); *Sherman v. Univ. of Washington*, 128 Wn.2d 164 (1996).

Nevertheless, these Washington Supreme Court and Court of Appeals decisions are not consistent with RPC 1.7(a), which, combined with RPC 1.10 (imputation), does not allow the same law office to represent two sides of a dispute "in the same litigation or other proceeding before a tribunal." In practice, the inconsistency between 'RPC 1.7(a) and Washington caselaw leads to confusion among lawyers and leads to trial court disqualifications of lawyers that should not occur because of the appellate court decisions.

It would be helpful to clarify the situation by conforming Washington's RPC 1.7 and RPC 1.10 to Washington practice. This would reduce confusion among in-house government lawyers and eliminate both the potential for disqualifications and for disciplinary grievances filed against government attorneys. The suggested amendments also seek to address the lack of consistent language and definitions in the ABA Model Rules relating to governments, government sub-entities, and government lawyers.

Specific Recommendations

The language changes were initially suggested by the Washington State Association of Municipal Attorneys and further developed by the Washington State Bar Association's Committee on Professional Ethics. Drafting involved consultation with the Office of the Attorney General, the Washington Association of Prosecuting Attorneys, and the Government Lawyers Bar Association.

The accompanying suggestions propose:

- A suggested new Washington definition in RPC 1.0B(f)

- A new Washington RPC 1.7(c)
- A new Washington RPC 1.7 Comment [42]
- An amendment to Washington RPC 1.10(a)
- An amendment to Washington RPC 1.13 Comment [9]

D. **Hearing:** A hearing is not requested.

E. **Expedited Consideration:** Expedited consideration is not requested.

SUGGESTED AMENDMENT
RULES OF PROFESSIONAL CONDUCT (RPC)
Rules 1.0B, 1.7, 1.10, and 1.13

1 **Suggested Amendment to RPC 1.0B, New Definition in RPC 1.0B(f)**

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3 **RPC 1.0B ADDITIONAL WASHINGTON TERMINOLOGY**

4 (a) – (e) [Unchanged.]

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

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SUGGESTED AMENDMENT

RULES OF PROFESSIONAL CONDUCT (RPC)

Rules 1.0B, 1.7, 1.10, and 1.13

1 **Suggested Amendment to RPC 1.7, New Washington RPC 1.7(c) and New Comment [42]**

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3 **RPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS**

4 (a) – (b) [Unchanged.]

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

10 **Comments**

11 [1] – [30] [Unchanged.]

12 **Additional Washington Comments (31-4142)**

13 [31] – [40] [Unchanged.]

14 ***Special Considerations in Internal Government ~~Common-Representations~~***

15 [41] [Unchanged.]

16 [42] A client within a government entity may be a specific agency, a branch of government,
17 another unit or subdivision of that government, or an individual government officer or employee.
18 See Rule 1.13 Comment [9] and Rule 1.11 Comment [5]. Lawyers who are public officers or
19 employees may be authorized or required to represent different adverse government agencies,
20 branches, units, subdivisions, or individuals in intragovernmental legal controversies where a
21 private lawyer could not represent multiple private clients. See Scope Comment [18]. Consistent
22 with applicable Washington law, lawyers within a government may represent intragovernmental
23 agencies, branches, units, subdivisions, and officers and employees including former officers or

SUGGESTED AMENDMENT

RULES OF PROFESSIONAL CONDUCT (RPC)

Rules 1.0B, 1.7, 1.10, and 1.13

1 employees, with conflicting or potentially conflicting interests. When the representation of an
2 agency, branch, unit, subdivision, officer or employee, appears to be directly adverse to another
3 governmental agency, branch, unit, subdivision, officer or employee, or former officer or
4 employee, and particularly when there is adverse representation in litigation or before a tribunal,
5 the multiple representations may require informed consent from various agencies, branches, units
6 or subdivisions, and/or an effective screening mechanism among the lawyers or the engagement
7 of one or more lawyers who are not a officers or employees of that government.

SUGGESTED AMENDMENT
RULES OF PROFESSIONAL CONDUCT (RPC)
Rules 1.0B, 1.7, 1.10, and 1.13

1 **Suggested Amendment to Washington RPC 1.10(a)**

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3 **RPC 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE**

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

SUGGESTED AMENDMENT
RULES OF PROFESSIONAL CONDUCT (RPC)
Rules 1.0B, 1.7, 1.10, and 1.13

1 **Suggested Amendment to Washington RPC 1.13 Comment [9]**

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3 **RPC 1.13 ORGANIZATION AS CLIENT**

4 (a) – (h) [Unchanged.]

5 **Comments**

6 [1] – [8] [Unchanged.]

7 [9] **Washington Revision** The duty defined in this Rule applies to lawyers representing
8 governmental organizations. Defining precisely the identity of the client and prescribing the
9 resulting obligations of such lawyers may be more difficult in the government context and is a
10 matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the
11 client may be a specific government agency, unit, subdivision, or it may also be a branch of
12 government, such as the executive branch, or it may also be the government entity as a whole.
13 For example, if the action or failure to act involves the head of a government unit bureau, either
14 the department of which the unit bureau is a part or the relevant branch of government entity
15 may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of
16 government officials, a ~~government~~ lawyer who is a public officer or employee may have
17 authority under applicable law to question such conduct more extensively than that of a lawyer
18 for a private organization in similar circumstances. Thus, when the client is a governmental
19 organization, a different balance may be appropriate between maintaining confidentiality and
20 assuring that the wrongful act is prevented or rectified, for public business is involved. In
21 addition, duties of lawyers who are public officers or employees, employed by the government or
22 lawyers in military service, may be defined by statutes and regulation. This Rule does not limit
23 that authority. See Scope. See also Rule 1.7(c), permitting a lawyer who is a public officer or

SUGGESTED AMENDMENT

RULES OF PROFESSIONAL CONDUCT (RPC)

Rules 1.0B, 1.7, 1.10, and 1.13

1 employee to represent more than one government agency, branch, unit, or subdivision, and
2 officers and employees including former officers or employees of that government, if the lawyer
3 reasonably believes that the multiple representations are required or allowed by constitutional or
4 statutory provisions, or by other applicable law.

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