

**RPC 1.4  
COMMUNICATION**

**(a)** A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0A(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

**(b)** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

**(c)** A lawyer shall communicate to a client or prospective client a lack of minimum levels of lawyer professional liability insurance as required by the provisions of this Rule.

(1) A lawyer not covered by lawyer professional liability insurance in the amounts specified in paragraph (c)(4) shall, before or at the time of commencing representation of a client, notify the client in writing of the absence of such insurance coverage and promptly obtain the client's informed consent in writing. A lawyer who knows or reasonably should know that the lawyer's professional liability insurance policy has either lapsed or been terminated during the representation shall within 30 days either (i) obtain a new policy in the required amounts or (ii) provide notice in writing to the client and promptly obtain the client's informed consent in writing. If a lawyer does not obtain a new policy in the required amounts or provide notice to the client and obtain the client's informed consent in writing within 30 days of a lapse or termination, the lawyer shall withdraw from representation of the client.

(2)(i) A notice to the client in substantially the following form satisfies the notice requirements of paragraph (c)(1):

Under Rule 1.4(c) of the Washington Rules of Professional Conduct, I must obtain your informed consent to provide legal representation and ensure that you understand and acknowledge that [I][this Firm] [do not][does not][no longer] maintain[s] [any lawyer professional liability insurance (sometimes called malpractice insurance)] [lawyer professional liability insurance (sometimes called malpractice insurance)] of at least one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) for all claims submitted during the policy period (typically 12 months). Because [I][we] do not carry this insurance coverage, it could be more difficult for you to recover an amount sufficient to compensate you for your loss or damages if [I am][we are] negligent.

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Lawyer's Signature

(ii) A client consent and acknowledgment in substantially the following form satisfies the informed consent requirements of paragraph (c)(1):

I acknowledge and supply this written consent, required by Rule 1.4(c) of the Washington

Rules of Professional Conduct, that [insert attorney or firm's name] [does not][no longer] maintain[s] [any lawyer professional liability insurance (sometimes called malpractice insurance)][lawyer professional liability insurance (sometimes called malpractice insurance)] with at least maximum coverage of \$100,000 for each claim and at least \$300,000 for all claims submitted during the policy period (typically 12 months), and I consent to representation by [the lawyer][the firm].

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Client's Signature

(3) A lawyer shall maintain a record of notices of disclosure to clients, and the signed consents and acknowledgments received from clients, for at least six (6) years after the representation is terminated.

(4) As used in this paragraph (c), "lawyer" means an active member of the Washington State Bar Association and any other person authorized by the Washington State Supreme Court to engage in the practice of law, including emeritus pro bono status lawyers and lawyers permitted to engage in the limited practice of law in this state as provided in Admission and Practice Rule (APR) 3(g), however, as used in this paragraph (c), "lawyer" does not include (i) a judge, arbitrator, or mediator not otherwise engaged in the practice of law; (ii) in-house counsel for a single entity, (iii) an employee of a governmental agency practicing law in that capacity, (iv) an employee of a nonprofit legal service organization, or a lawyer volunteering with such an organization, where the nonprofit legal service organization provides lawyer professional liability insurance coverage at the minimum levels required by this paragraph to that employee or volunteer pro bono lawyer. "Lawyer professional liability insurance" means a professional liability insurance policy that provides coverage for claims made against the lawyer that arise from an act, error, or omission in the lawyer's performance of legal services to a client, with limits of liability of at least one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) for all claims submitted during the policy period.

[Adopted effective September 1, 1985; Amended effective September 1, 2006; April 14, 2015; September 1, 2021.]

### Comment

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

#### *Communicating with Client*

[2] **[Washington revision]** If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from an opposing lawyer an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless that client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See RPC 1.2(a). See also RPC 1.1 comments [6] and [10] as to decisions to associate other lawyers or LLLTs.

[Comment [2] amended effective April 14, 2015; September 1, 2016.]

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations--depending on both the importance of the action under consideration and the feasibility of consulting with the client--this duty will require consultation prior to taking action. In other circumstances, such as during a trial

when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

[Comment [4] amended effective September 1, 2016.]

### *Explaining Matters*

[5] **[Washington revision]** The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0A(e).

[Comment [5] amended effective April 14, 2015.]

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

### *Withholding Information*

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

[Comments adopted effective September 1, 2006.]

### **Additional Washington Comments [8-13]**

[8] A lawyer without a basic level of professional liability insurance might not pay for damages or losses a client incurs that result from the lawyer's mistakes or negligence. Consequently, prospective clients and clients should have sufficient information about whether the lawyer maintains a minimum level of lawyer professional liability insurance so they can intelligently determine whether they wish to engage, or continue to engage, that lawyer. Paragraph (c) requires a lawyer to provide disclosure if the lawyer is without a level of lawyer professional liability insurance specified in paragraph (c), and to obtain each client's acknowledgement and informed consent. Client consent should be obtained promptly—ordinarily within 10 days of the lawyer's providing disclosure. Certain lawyers are excluded from the disclosure requirements of Rule 1.4(c), including full-time judges, arbitrators and mediators, in-house lawyers for a single entity, and employees of governmental agencies. If a lawyer serving as a judge represents clients outside judicial duties, or an in-house lawyer or government employee represents other clients, such a judge or lawyer is subject to the requirements of Rule 1.4(c) regarding those representations.

[9] As used in paragraph (c), a lawyer who "maintains" or "is covered by" lawyer professional liability insurance is an insured lawyer under a lawyer professional liability insurance policy providing coverage regarding claims relating to legal services provided by that lawyer. The minimum limits of lawyer professional liability insurance specified by paragraph (c)(4) include any deductible or self-insured retention that must be paid by the lawyer or the lawyer's law firm for claim expenses and damages. Lawyer professional liability insurance, as defined in paragraph (c)(4), does not include an insurance policy with a deductible or self-insured retention that the lawyer knows or has reason to know cannot be paid by the lawyer or the firm if a loss occurs.

[10] Whether the disclosure and notice obligations of paragraph (c) apply to a Washington-licensed lawyer practicing in another jurisdiction is determined by the choice of law provisions of Rule 8.5(b).

[11] In addition to complying with paragraph (c), every active member of the bar must comply with the reporting requirements of Admission and Practice Rule (APR) 26 under which lawyers in the private practice of law are required to annually report their insurance coverage to the Washington State Bar Association.

[12] Withdrawal from a representation under paragraph (c)(1) is a circumstance where withdrawal is obligatory under Rule 1.16(a)(1) because the representation would violate the Rules of Professional Conduct. The withdrawal shall be accomplished in conformity with the requirements of Rule 1.16(c) and (d).

[13] In an emergency where the health, safety, or a financial interest of a person is threatened with imminent and irreparable harm, a lawyer not covered by lawyer professional liability insurance in the amounts specified in paragraph (c)(4) may take legal action on behalf of such a person even though the person cannot receive or evaluate the notice required by paragraph (c)(1) or there is insufficient time to provide it. A lawyer who represents a person in such an exigent situation shall provide the notice required by paragraph (c)(1) as soon as reasonably practicable.

[Comments adopted effective September 1, 2021.]