

COMMUNICATION WITH PERSON REPRESENTED BY A LAWYER

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

[Adopted effective September 1, 1985; Amended effective October 29, 2002; September 1, 2006; April 14, 2015.]

Comment

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[2] **[Washington revision]** This Rule applies to communications with any person who is represented by a lawyer concerning the matter to which the communication relates.

[Comment 2 amended effective April 14, 2015.]

[3] **[Washington revision]** The Rule applies even though the person represented by a lawyer initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[Comment 3 amended effective April 14, 2015.]

[4] **[Washington revision]** This Rule does not prohibit communication with a person represented by a lawyer or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a person represented by a lawyer who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[Comment 4 amended effective April 14, 2015.]

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] **[Washington revision]** A lawyer who is uncertain whether a communication with a person represented by a lawyer is permissible may seek a court order. A lawyer may also seek a court

order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by a lawyer is necessary to avoid reasonably certain injury.

[Comment 6 amended effective April 14, 2015.]

[7] **[Washington revision]** In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by their own lawyer, the consent by that lawyer to a communication will be sufficient for purposes of this Rule. In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[Comment amended effective April 14, 2015; January 1, 2023.]

[8] **[Washington revision]** The prohibition on communication with a person represented by a lawyer only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0A(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of another lawyer by closing eyes to the obvious.

[Comment 8 amended effective April 14, 2015.]

[9] **[Washington revision]** In the event the person with whom the lawyer communicates is not known to be represented by a lawyer in the matter, the lawyer's communications are subject to Rule 4.3.

[Comment 9 amended April 14, 2015.]

Additional Washington Comments (10 – 12)

[10] Comment 7 to Model Rule 4.2 was revised to conform to Washington law. The phrase "or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability" and the reference to Model Rule 3.4(f) was deleted. Whether and how lawyers may communicate with employees of an adverse party is governed by *Wright v. Group Health Hospital*, 103 Wn.2d 192, 691 P.2d 564 (1984). See also Washington Comment [5] to Rule 3.4.

[Comment 10 adopted effective April 14, 2015.]

[11] **[Washington revision]** A person not otherwise represented by a lawyer to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, they are to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation. (The provisions of this Comment were taken from former Washington RPC 4.2(b)).

[Comment 11 amended effective April 14, 2015; January 1, 2023.]

[12] A person who is assisted by an LLLT is not represented by a lawyer for purposes of this Rule. See APR 28B(4). Therefore, a lawyer may communicate directly with a person who is assisted by an LLLT. Lawyer communication with a person who is assisted by an LLLT instead

is governed by RPC 4.3 and RPC 4.4. For special considerations that may arise when a lawyer deals with a person who is assisted by an LLLT, see Rule 4.4 Comment [5].

[Comments adopted effective September 1, 2006; amended effective April 14, 2015.]