

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE EXPEDITED)
ADOPTION OF PROPOSED AMENDMENTS TO)
RULES OF PROFESSIONAL CONDUCT RPC 1.0B)
– TERMS AND NEW COMMENTS TO RPC 1.5,)
RPC 1.8 – CONFLICT OF INTEREST, RPC 1.10 –)
IMPUTATION OF CONFLICTS OF INTEREST:)
GENERAL RULE, RPC 1.15A(H)(9) –)
SAFEGUARDING PROPERTY, RPC 1.17 – SALE)
OF LAW PRACTICE, TITLE 3 – ADVOCATE,)
TITLE 4 – TRANSACTIONS WITH PERSONS)
OTHER THAN CLIENTS, RPC 5.8 –)
MISCONDUCT INVOLVING DISBARRED,)
SUSPENDED, RESIGNED, AND INACTIVE)
LAWYERS, NEW RPC 5.9 AND 5.10 – LAWYERS)
ASSOCIATED IN A LAW FIRM WITH LLLTs,)
TITLE 7 – INFORMATION ABOUT LEGAL)
SERVICES AND TITLE 8 – MAINTAINING THE)
INTEGRITY OF THE PROFESSION)
)
)
)

ORDER

NO. 25700-A- 1096

Filed
Washington State Supreme Court

MAR 23 2015 MT

Ronald R. Carpenter
Clerk

The Washington State Bar Association, having recommended the expedited adoption of the Proposed Amendments to Rules of Professional Conduct RPC 1.0B – Terms and New Comments to RPC 1.5, RPC 1.8 – Conflict of Interest, RPC 1.10 – Imputation of Conflicts of Interest: General Rule, RPC 1.15A(h)(9) – Safeguarding Property, RPC 1.17 – Sale of Law Practice, Title 3 – Advocate, Title 4 – Transactions with Persons Other Than Clients, RPC 5.8 – Misconduct Involving Disbarred, Suspended, Resigned, and Inactive Lawyers, New RPC 5.9 and 5.10 – Lawyers Associated in a Law Firm with LLLTs, Title 7 – Information about Legal Services and Title 8 – Maintaining the Integrity of the Profession, and the Court having considered the amendments, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

709/16

Now, therefore, it is hereby

ORDERED:

- (a) That the new rules as attached hereto are adopted.
- (b) That the new rules will be published expeditiously in the Washington Reports and will become effective upon publication.

(c) That the Washington State Bar Association will solicit and gather feedback on these rules and provide it to the court nine months after the rules' effective date.

DATED at Olympia, Washington this 23rd day of March, 2015.

Johnson, J.
Owens, J.
Fairhurst, J.
Stephens, J.

Madsen, C.J.
Wiggins, J.
Conzeler, J.
Robt Madsen, J.
Sp. J.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

TITLE

WASHINGTON RULES OF PROFESSIONAL CONDUCT (RPC)

Table of Rules

Fundamental Principles of Professional Conduct

PREAMBLE AND SCOPE

Preamble: A Lawyer's Responsibilities

Scope

Rule

1.0A Terminology

1.0B Additional Washington Terminology

TITLE 1 CLIENT-LAWYER RELATIONSHIP

1.1 Competence

1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

1.3 Diligence

1.4 Communication

1.5 Fees

1.6 Confidentiality of Information

1.7 Conflict of Interest: Current Clients

1.8 Conflict of Interest: Current Clients: Specific Rules

1.9 Duties to Former Client

1.10 Imputation of Conflicts of Interest: General Rule

1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees

1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

1.13 Organization as Client

1.14 Client with Diminished Capacity

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1.15A Safeguarding Property

1.15B Required Trust Account Records

1.16 Declining or Terminating Representation

1.17 Sale of Law Practice

1.18 Duties of Prospective Client

TITLE 2 COUNSELOR

2.1 Advisor

2.2 (Deleted)

2.3 Evaluation for Use by Third Persons

2.4 Lawyer Serving as Third-Party Neutral

TITLE 3 ADVOCATE

3.1 Meritorious Claims and Contentions

3.2 Expediting Litigation

3.3 Candor Toward the Tribunal

3.4 Fairness to Opposing Party and Counsel

3.5 Impartiality and Decorum of the Tribunal

3.6 Trial Publicity

3.7 Lawyer as Witness

3.8 Special Responsibilities of a Prosecutor

3.9 Advocate in Nonadjudicative Proceedings

TITLE 4 TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

4.1 Truthfulness in Statements to Others

4.2 Communication With Person Represented by ~~Counsel~~ Lawyer

4.3 Dealing With ~~Unrepresented~~ Person Not Represented by a Lawyer

4.4 Respect for Rights of Third Person

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

TITLE 5 LAW FIRMS AND ASSOCIATIONS

- 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers
- 5.2 Responsibilities of a Subordinate Lawyer
- 5.3 Responsibilities Regarding Nonlawyer Assistants
- 5.4 Professional Independence of a Lawyer
- 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law
- 5.6 Restrictions on Right to Practice
- 5.7 Responsibilities Regarding Law-Related Services
- 5.8 Misconduct Involving ~~Disbarred, Suspended, Resigned, and Inactive~~ Lawyers and LLLTs
Not Actively Licensed to Practice Law
- 5.9 Business Structures Involving LLLT and Lawyer Ownership
- 5.10 Responsibilities Regarding Other Legal Practitioners

TITLE 6 PUBLIC SERVICE

- 6.1 Pro Bono Publico Service
- 6.2 Accepting Appointments
- 6.3 Membership in Legal Services Organization
- 6.4 Law Reform Activities Affecting Client Interests
- 6.5 Nonprofit and Court-Annexed Limited Legal Service Programs

TITLE 7 INFORMATION ABOUT LEGAL SERVICES

- 7.1 Communications Concerning a Lawyers Services
- 7.2 Advertising
- 7.3 Direct Contact with Prospective Clients
- 7.4 Communication of Fields of Practice and Specialization
- 7.5 Firm Names and Letterheads

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges

TITLE 8 MAINTAINING THE INTEGRITY OF THE PROFESSION

8.1 Bar Admission and Disciplinary Matters

8.2 Judicial and Legal Officials

8.3 Reporting Professional Misconduct

8.4 Misconduct

8.5 Disciplinary Authority; Choice of Law

Appendix: Guidelines for Applying Rule of 3.6

FUNDAMENTAL PRINCIPLES OF PROFESSIONAL CONDUCT*

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. To understand this role, lawyers must comprehend the components of our legal system, and the interplay between the different types of professionals within that system. ~~The fulfillment of this~~ To fulfill this role, ~~requires an understanding by lawyers of~~ must understand their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which a lawyer may encounter can be foreseen, but fundamental ethical principles are always present as guidelines. Within the

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 framework of these principles, a lawyer must with courage and foresight be able and ready to
2 shape the body of the law to the ever-changing relationships of society.

3 The Rules of Professional Conduct point the way to the aspiring lawyer and provide standards by
4 which to judge the transgressor. Each lawyer must find within his or her own conscience the
5 touchstone against which to test the extent to which his or her actions should rise above minimum
6 standards. But in the last analysis it is the desire for the respect and confidence of the members
7 of the legal profession and the society which the lawyer serves that should provide to a lawyer
8 the incentive for the highest possible degree of ethical conduct. The possible loss of that respect
9 and confidence is the ultimate sanction. So long as its practitioners are guided by these principles,
10 the law will continue to be a noble profession. This is its greatness and its strength, which permit
11 of no compromise.

12 * These *Fundamental Principles of the Rules of Professional Conduct* are taken from the former
13 Preamble to the Rules of Professional Conduct as approved and adopted by the Supreme Court in
14 1985. Washington lawyers and judges have looked to the 1985 Preamble as a statement of our
15 overarching aspiration to faithfully serve the best interests of the public, the legal system, and the
16 efficient administration of justice. The former Preamble is preserved here to inspire lawyers to
17 strive for the highest possible degree of ethical conduct, and these *Fundamental Principles* should
18 inform many of our decisions as lawyers. The *Fundamental Principles* do not, however, alter any
19 of the obligations expressly set forth in the Rules of Professional Conduct, nor are they intended
20 to affect in any way the manner in which the Rules are to be interpreted or applied.

21 **PREAMBLE AND SCOPE**

22 **PREAMBLE: A LAWYER'S RESPONSIBILITIES**

23 [1] – [11] [Unchanged.]

24 [12] [Washington revision] The legal profession's relative autonomy carries with it special
25 responsibilities of self-government. The profession has a responsibility to assure that its
26

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers legal practitioners. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] [Unchanged.]

SCOPE

[14] – [21] [Unchanged.]

Additional Washington Comments (22 - ~~23~~25)

[22] [Unchanged.]

[23] The structure of these Rules generally parallels the structure of the American Bar Association's Model Rules of Professional Conduct. The exceptions to this approach are Rule 1.15A, which varies substantially from Model Rule 1.15, and Rules 1.15B, ~~and 5.8, 5.9, and 5.10,~~ neither ~~none~~ of which is found in the Model Rules. In other cases, when a provision has been wholly deleted from the counterpart Model Rule, the deletion is signaled by the phrase "Reserved." When a provision has been added, it is generally appended at the end of the Rule or the paragraph in which the variation appears. Whenever the text of a Comment varies materially from the text of its counterpart Comment in the Model Rules, the alteration is signaled by the phrase "Washington revision." Comments that have no counterpart in the Model Rules are compiled at the end of each Comment section under the heading "Additional Washington Comment(s)" and are consecutively numbered. As used herein, the term "former Washington RPC" refers to Washington's Rules of Professional Conduct (adopted effective September 1, 1985, with amendments through September 1, 2003). The term "Model Rule(s)" refers to the ~~2004 Edition of the~~ American Bar Association's Model Rules of Professional Conduct.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[24] In addition to providing standards governing lawyer conduct in the lawyer's own practice of law, these Rules encompass a lawyer's duties related to individuals who provide legal services under a limited license. A lawyer should remember that these providers also engage in the limited practice of law and are part of the legal profession, albeit with strict limitations on the nature and scope of the legal services they provide. See APR 28; LLLT RPC 1.2.

[25] Rule 5.9 refers specifically to a lawyer's duties relating to business structures permitted between lawyers and LLLTs. Rule 5.10 refers to a lawyer's responsibilities when working with other legal practitioners operating under a limited license. Other rules have been amended to address a lawyer's relationship with and duties regarding LLLTs. In general, a lawyer should understand the authorized scope of the services provided by LLLTs, including the requirement that an LLLT must refer a client to a lawyer when that client requires services outside of that scope. See LLLT RPC 1.2; APR 28(F). Lawyers should participate in the development of a robust system of cross-referral between lawyers and LLLTs to promote access to justice and the smooth and efficient provision of a complete range of legal services. In addition, a robust system of cross-referral will benefit the profession by supporting LLLTs in operating ethically within their limited licensure. See Preamble Comment [6].

RPC 1.0A TERMINOLOGY

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 (c) "Firm" or "law firm" denotes a lawyer, ~~or~~ lawyers, an LLLT, LLLTs, or any combination
2 thereof in a law partnership, professional corporation, sole proprietorship or other association
3 authorized to practice law; or lawyers or LLLTs employed in a legal services organization or the
4 legal department of a corporation or other organization.

5 (d) "Fraud" or "fraudulent" denotes conduct that has a purpose to deceive and is fraudulent under
6 the substantive or procedural law of the applicable jurisdiction, except that it is not necessary that
7 anyone has suffered damages or relied on the misrepresentation or failure to inform.

8 (e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after
9 the lawyer has communicated adequate information and explanation about the material risks of
10 and reasonably available alternatives to the proposed course of conduct.

11 (f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A
12 person's knowledge may be inferred from circumstances.

13 (g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a
14 professional corporation, or a member of an association authorized to practice law.

15 (h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the
16 conduct of a reasonably prudent and competent lawyer.

17 (i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that
18 the lawyer believes the matter in question and that the circumstances are such that the belief is
19 reasonable.

20 (j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of
21 reasonable prudence and competence would ascertain the matter in question.

22 (k) "Screened" denotes the isolation of a lawyer or an LLLT from any participation in a matter
23 through the timely imposition of procedures within a firm that are reasonably adequate under the
24 circumstances to protect information that the isolated lawyer or LLLT is obligated to protect under
25 these Rules, the LLLT Rules of Professional Conduct, or other law.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 (l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and
2 weighty importance.

3 (m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or legislative
4 body, administrative agency or other body acting in an adjudicative capacity. A legislative body,
5 administrative agency or other body acts in an adjudicative capacity when a neutral official, after
6 the presentation of evidence or legal argument by a party or parties, will render a binding legal
7 judgment directly affecting a party's interests in a particular matter.

8 (n) "Writing" or "written" denotes a tangible or electronic record of a communication or
9 representation, including handwriting, typewriting, printing, photostating, photography, audio or
10 videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process
11 attached to or logically associated with a writing and executed or adopted by a person with the
12 intent to sign the writing.

13 **Comment**

14 [1] – [5] [Unchanged.]

15 [6] **[Washington revision]** Many of the Rules of Professional Conduct require the lawyer to
16 obtain the informed consent of a client or other person (e.g., a former client or, under certain
17 circumstances, a prospective client) before accepting or continuing representation or pursuing a
18 course of conduct. See, e.g., Rules 1.2(c), 1.6(a) and 1.7(b). The communication necessary to
19 obtain such consent will vary according to the Rule involved and the circumstances giving rise to
20 the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the
21 client or other person possesses information reasonably adequate to make an informed decision.
22 Ordinarily, this will require communication that includes a disclosure of the facts and
23 circumstances giving rise to the situation, any explanation reasonably necessary to inform the
24 client or other person of the material advantages and disadvantages of the proposed course of
25 conduct and a discussion of the client's or other person's options and alternatives. In some
26

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of another counsellawyer. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by another counsellawyer in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by another counsellawyer in giving the consent should be assumed to have given informed consent.

[7] [Unchanged.]

Screened

[8] **[Washington revision]** This definition applies to situations where screening of a personally disqualified lawyer or LLLT is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12, 1.18, or 6.5.

[9] **[Washington revision]** The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer or LLLT remains protected. The personally disqualified lawyer or LLLT should acknowledge the obligation not to communicate with any of the other lawyers or LLLTs in the firm with respect to the matter. Similarly, other lawyers or LLLTs in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer or LLLT with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers or LLLTs of the presence of the screening, it may be appropriate for the firm

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

to undertake such procedures as a written undertaking by the screened lawyer or LLLT to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer or LLLT relating to the matter, denial of access by the screened lawyer or LLLT to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer or LLLT and all other firm personnel.

[10] **Washington revision** In order to be effective, screening measures must be implemented as soon as practical after a lawyer, LLLT, or law firm knows or reasonably should know that there is a need for screening. See also Washington Comment [15].

Additional Washington Comments (11 - 16)

[11] [Unchanged.]

Firm

[12] Although the definition of "firm" or "law firm" in Rule 1.0A(c) differs from the definition set forth in the Terminology section of Washington's former Rules of Professional Conduct, there is no intent to change the scope of the definition or to alter existing Washington law on the application of the Rules of Professional Conduct to lawyers in a government office.

Fraud

[13] Model Rule 1.0A(d) was modified to clarify that the terms "fraud" and "fraudulent" in the Rules of Professional Conduct do not include an element of damage or reliance.

[14] – [15] [Unchanged.]

Other

[16] For the scope of the phrase "information relating to the representation of a client," which is not defined in Rule 1.0A, see Comment [19] to Rule 1.6.

RPC 1.0B ADDITIONAL WASHINGTON TERMINOLOGY

(a) "APR" denotes the Washington Supreme Court's Admission and Practice Rules.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(b) “Legal practitioner” denotes a lawyer or a limited license legal technician licensed under APR 28.

(c) “Limited License Legal Technician” or “LLLT” denotes a person qualified by education, training, and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by APR 28 and related regulations. The LLLT does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in APR 28 to a pro se client.

(d) “Limited Practice Officer” or “LPO” denotes a person licensed in accordance with the procedures set forth in APR 12 and who has maintained his or her certification in accordance with the rules and regulations of the Limited Practice Board.

(e) “Representation” or “represent,” when used in connection with the provision of legal assistance by an LLLT, denotes limited legal assistance as set forth in APR 28 to a pro se client.

Washington Comments

[1] This Rule addresses the evolution of the practice of law in Washington to include the limited licensure of legal professionals that permits persons other than lawyers to provide legal assistance that would otherwise constitute the unauthorized practice of law.

[2] These Rules apply to a lawyer’s ethical duties, including specific duties that encompass a lawyer’s dealings with legal practitioners practicing under a limited license and their clients. LLLTs are bound by corresponding duties that are set forth in the LLLT RPC.

[3] LLLTs are authorized to engage in the limited practice of law in explicitly defined areas. Unlike a lawyer, an LLLT may perform only limited services for a client. See APR 28(F), (H). A lawyer who interacts with an LLLT about the subject matter of that LLLT’s representation or who interacts with an otherwise pro se client represented by an LLLT should be aware of the scope of the LLLT’s license and the ethical obligations imposed on an LLLT by the LLLT RPC.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

See APR 28(F)-(H); Appendix APR 28 Regulation 2; LLLT RPC 1.2, 1.5, 4.2, 4.3. See also, RPC 5.10.

RPC 1.1 COMPETENCE

[Unchanged.]

Comment

[1] - [6] [Unchanged.]

Additional Washington Comment (7)

[7] In some circumstances, a lawyer can also provide adequate representation by enlisting the assistance of an LLLT of established competence, within the scope of the LLLT's license and consistent with the provisions of the LLLT RPC. However, a lawyer may not enter into an arrangement for the division of the fee with an LLLT who is not in the same firm as the lawyer.

See Comment [7] to Rule 1.5(e); LLLT RPC 1.5(e). Therefore, a lawyer may enlist the assistance of an LLLT who is not in the same firm only (1) after consultation with the client in accordance with Rules 1.2 and 1.4, and (2) by referring the client directly to the LLLT.

RPC 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

[Unchanged.]

Comment

[1] - [13] [Unchanged.]

Additional Washington Comment (14 - 17)

Agreements Limiting Scope of Representation

[14] An agreement limiting the scope of a representation shall consider the applicability of Rule 4.2 to the representation. (The provisions of this Comment were taken from former Washington RPC 1.2(c).) See also Comment [11] to Rule 4.2 for specific considerations pertaining to contact

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

with an person otherwise represented ~~person~~by a lawyer to whom limited representation is being or has been provided.

Acting as a Lawyer Without Authority

[15] Paragraph (f) was taken from former Washington RPC 1.2(f), which was deleted from the RPC by amendment effective September 1, 2006. The mental state has been changed from “willfully” to one of knowledge or constructive knowledge. See Rule 1.0A(f) & (j). Although the language and structure of paragraph (f) differ from the former version in a number of other respects, paragraph (f) does not otherwise represent a change in Washington law interpreting former RPC 1.2(f).

[16] – [17] [Unchanged.]

RPC 1.3 DILIGENCE

[Unchanged.]

Comment

[1] - [5] [Unchanged.]

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.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

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

Comment

[1] [Unchanged.]

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 counsel 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 Rule 1.2(a).

[3] – [4] [Unchanged.]

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

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 information consistent with the duty to act in the client's best interests, and the client's overall
2 requirements as to the character of representation. In certain circumstances, such as when a lawyer
3 asks a client to consent to a representation affected by a conflict of interest, the client must give
4 informed consent, as defined in Rule 1.0A(e).

5 [6] – [7] [Unchanged.]

6 **RPC 1.5 FEES**

7 [Unchanged.]

8 **Comment**

9 [1] [Unchanged.]

10 *Basis or Rate of Fee*

11 [2] **Washington revision** When the lawyer has regularly represented a client, they ordinarily
12 will have evolved an understanding concerning the basis or rate of the fee and the expenses for
13 which the client will be responsible. In a new client-lawyer relationship, however, an
14 understanding as to fees and expenses must be promptly established. Generally, it is desirable to
15 furnish the client with at least a simple memorandum or copy of the lawyer's customary fee
16 arrangements that states the general nature of the legal services to be provided, the basis, rate or
17 total amount of the fee and whether and to what extent the client will be responsible for any costs,
18 expenses or disbursements in the course of the representation. A written statement concerning the
19 terms of the engagement reduces the possibility of misunderstanding. See Washington Comment
20 [17] for fee agreements that include LLLT services.

21 [3] - [6] [Unchanged.]

22 *Division of Fee*

23 [7] **Washington revision** A division of fee is a single billing to a client covering the fee of two
24 or more lawyers who are not in the same firm. A division of fee facilitates association of more
25 than one lawyer in a matter in which neither alone could serve the client as well, and most often
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SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1. See also Washington Comment [18].

[8] - [9] [Unchanged.]

Additional Washington Comments (10 - 1619)

Reasonableness of Fee and Expenses

[10] [Unchanged.]

[11] Under paragraph (a)(9), one factor in determining whether a fee is reasonable is whether the fee agreement or confirming writing demonstrates that the client received a reasonable and fair disclosure of material elements of the fee agreement. Lawyers are encouraged to use written fee agreements that fully and fairly disclose all material terms in a manner easily understood by the client. See also Washington Comment [17] regarding fee agreements that include LLLT services.

[12] - [14] [Unchanged.]

[15] If a lawyer and a client agree to a retainer under paragraph (f)(1) or a flat fee under paragraph (f)(2) and the lawyer complies with the applicable requirements, including obtaining agreement in a writing signed by the client, the fee is considered the lawyer's property on receipt and must not be deposited into a trust account containing client or third-party funds. See Rule 1.15A(c)

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(lawyer must hold property of clients separate from lawyer's own property). For definitions of the terms "writing" and "signed," see Rule 1.0A(n).

[16] [Unchanged.]

Fee Agreements in Law Firms That Include Both Lawyers and LLLTs

[17] LLLTs are required to disclose the scope of the representation and the basis or rate of their fees and expenses in writing to the client prior to the performance of services for a fee. APR 28G(3); LLLT RPC 1.5(b). Accordingly, when lawyers and LLLTs are associated in a firm, if the firm's services include representation by an LLLT who acts under the authority of APR 28, then there must be a written fee agreement that comports with APR 28G(3) and LLLT RPC 1.5(b). See RPC 8.4(f)(2).

[18] Paragraph (e) does not allow division of fees between a lawyer and an LLLT who are not in the same firm. See LLLT RPC 1.5(e).

[19] An LLLT, unlike a lawyer, is prohibited from entering into a contingent fee or retainer agreement with a client directly. See LLLT RPC 1.5 Comment [1]. Nonetheless, this prohibition was not intended to prohibit a lawyer from sharing fees that include contingent fees or retainers with an LLLT with whom the lawyer has entered into a for-profit business relationship under Rule 5.9. See Rules 5.9 and 5.10 for a managing lawyer's additional duties regarding LLLTs who are members of the same firm as the lawyer. See also RPC 5.4 Washington Comment [4].

RPC 1.6 CONFIDENTIALITY OF INFORMATION

[Unchanged.]

Comment

See also Washington Comment [19].

[1] [Unchanged.]

[2] **[Washington revision]** A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

the representation. See Rule 1.0A(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] - [4] [Unchanged.]

Authorized Disclosure

[5] **[Washington revision]** Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm to other lawyers or LLLTs within the firm, unless the client has instructed that particular information be confined to specified lawyers or LLLTs.

[6] - [18] [Unchanged.]

Additional Washington Comments (19 - 26)

[19] - [26] [Unchanged.]

RPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

[Unchanged.]

Comment

General Principles

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[1] **Washington revision** Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0A(e) and (b).

[2] – [12] [Unchanged.]

Interest of Person Paying for a Lawyer's Service

[13] – [16] [Unchanged.]

[17] **Washington revision** Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0A(m)), such representation may be precluded by paragraph (b)(1). See also Washington Comment [38].

Informed Consent

[18] **Washington revision** Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0A(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty,

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] [Unchanged.]

Consent Confirmed in Writing

[20] **[Washington revision]** Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0A(b). See also Rule 1.0A(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0A(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

[21] – [35] [Unchanged.]

Additional Washington Comments (36 - 41)

[36] – [41] [Unchanged.]

RPC 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 (2) the client is advised in writing of the desirability of seeking and is given a reasonable
2 opportunity to seek the advice of an independent legal counsel lawyer on the transaction; and

3 (3) the client gives informed consent, in a writing signed by the client, to the essential terms of
4 the transaction and the lawyer's role in the transaction, including whether the lawyer is
5 representing the client in the transaction.

6 (b) A lawyer shall not use information relating to representation of a client to the disadvantage of
7 the client unless the client gives informed consent, except as permitted or required by these Rules.

8 (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or
9 prepare on behalf of the client an instrument giving the lawyer or a person related to the lawyer
10 any substantial gift unless the lawyer or other recipient of the gift is related to the client. For
11 purposes of this paragraph, related persons include spouse, child, grandchild, parent, grandparent
12 or other relative or individual with whom the lawyer or the client maintains a close, familial
13 relationship.

14 (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an
15 agreement giving the lawyer literary or media rights to a portrayal or account based in substantial
16 part on information relating to the representation.

17 (e) A lawyer shall not, while representing a client in connection with contemplated or pending
18 litigation, advance or guarantee financial assistance to a client, except that:

19 (1) a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses
20 of investigation, expenses of medical examination, and costs of obtaining and presenting
21 evidence, provided the client remains ultimately liable for such expenses; and

22 (2) in matters maintained as class actions only, repayment of expenses of litigation may be
23 contingent on the outcome of the matter.

24 (f) A lawyer shall not accept compensation for representing a client from one other than the client
25 unless:

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 (1) the client gives informed consent;

2 (2) there is no interference with the lawyer's independence of professional judgment or with the
3 client-lawyer relationship; and

4 (3) information relating to representation of a client is protected as required by Rule 1.6.

5 **(g)** A lawyer who represents two or more clients shall not participate in making an aggregate
6 settlement of the claims of or against the clients, or in a criminal case an aggregated agreement
7 as to guilty or nolo contendere pleas, unless each client gives informed consent, confirmed in
8 writing. The lawyer's disclosure shall include the existence and nature of all the claims or pleas
9 involved and the participation of each person in the settlement.

10 **(h)** A lawyer shall not:

11 (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice
12 unless permitted by law and the client is independently represented by a lawyer in making the
13 agreement; or

14 (2) settle a claim or potential claim for such liability with an unrepresented-client or former client
15 unless that person is advised in writing of the desirability of seeking and is given a reasonable
16 opportunity to seek the advice of an independent legal counsel lawyer in connection therewith.

17 **(i)** A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of
18 litigation the lawyer is conducting for a client, except that the lawyer may:

19 (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

20 (2) contract with a client for a reasonable contingent fee in a civil case.

21 **(j)** A lawyer shall not:

22 (1) have sexual relations with a current client of the lawyer unless a consensual sexual relationship
23 existed between them at the time the client-lawyer relationship commenced; or

24 (2) have sexual relations with a representative of a current client if the sexual relations would, or
25 would likely, damage or prejudice the client in the representation.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(3) For purposes of Rule 1.8(j), "lawyer" means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.

(k) While lawyers are associated in a firm with other lawyers or LLLTs, a prohibition in the foregoing paragraphs (a) through (i) of this Rule or LLLT RPC 1.8 that applies to any one of them shall apply to all of them, except that the prohibitions in paragraphs (a), (h), and (i) of LLLT RPC 1.8 shall apply to firm lawyers only if the conduct is also prohibited by this Rule.

(l) A lawyer who is related to another lawyer or LLLT as parent, child, sibling, or spouse, or who has any other close familial or intimate relationship with another lawyer or LLLT, shall not represent a client in a matter directly adverse to a person who the lawyer knows is represented by the related lawyer or LLLT unless:

(1) the client gives informed consent to the representation; and

(2) the representation is not otherwise prohibited by Rule 1.7.

(m) A lawyer shall not:

(1) make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm:

(i) to bear the cost of providing conflict counsel; or

(ii) to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel; or

(2) knowingly accept compensation for the delivery of indigent defense services from a lawyer who has entered into a current agreement in violation of paragraph (m)(1).

Comment

[1] [Unchanged.]

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[2] **[Washington revision]** Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of an independent legal counsel lawyer. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement and the existence of reasonably available alternatives and should explain why the advice of an independent legal counsel lawyer is desirable. See Rule 1.0A(e) (definition of informed consent).

[3] [Unchanged.]

[4] **[Washington revision]** If the client is independently represented by a lawyer in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent ~~counsel~~ lawyer. The fact that the client was independently represented by a lawyer in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

[5] – [12] [Unchanged.]

Aggregate Settlements

[13] **[Washington revision]** Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule
2 stated in this paragraph is a corollary of both these Rules and provides that, before any settlement
3 offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform
4 each of them about all the material terms of the settlement, including what the other clients will
5 receive or pay if the settlement or plea offer is accepted. See also Rule 1.0A(e) (definition of
6 informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding
7 derivatively, may not have a full client-lawyer relationship with each member of the class;
8 nevertheless, such lawyers must comply with applicable rules regulating notification of class
9 members and other procedural requirements designed to ensure adequate protection of the entire
10 class.

Limiting Liability and Settling Malpractice Claims

12 [14] [Washington revision] Agreements prospectively limiting a lawyer's liability for
13 malpractice are prohibited unless permitted by law and the client is independently represented by
14 a lawyer in making the agreement because they are likely to undermine competent and diligent
15 representation. Also, many clients are unable to evaluate the desirability of making such an
16 agreement before a dispute has arisen, particularly if they are then represented by the lawyer
17 seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into
18 an agreement with the client to arbitrate legal malpractice claims, provided such agreements are
19 enforceable and the client is fully informed of the scope and effect of the agreement. Nor does
20 this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where
21 permitted by law, provided that each lawyer remains personally liable to the client for his or her
22 own conduct and the firm complies with any conditions required by law, such as provisions
23 requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit
24 an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a
25
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SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] **Washington revision** Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an ~~unrepresented~~ client or former client not represented by a lawyer, the lawyer must first advise such a person in writing of the appropriateness of independent representation by a lawyer in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult an independent counsellawyer.

[16] - [20] [Unchanged.]

Additional Washington Comments (21-2931)

[21] – [29] [Unchanged.]

Settling Malpractice Claims

[30] A client or former client of an LLLT who is not represented by a lawyer is unrepresented for purposes of Rule 1.8(h)(2).

Lawyers Associated in Firms with Limited License Legal Technicians

[31] LLLT RPC 1.8 prohibits LLLTs from engaging in certain conduct that is not necessarily prohibited to lawyers by this Rule. See LLLT RPC 1.8(a) (strictly prohibiting a LLLT from entering into a business transaction with a client); LLLT RPC 1.8(h)(1) (strictly prohibiting a LLLT from making an agreement prospectively limiting the LLLT's liability to a client for malpractice); LLLT RPC 1.8(i) (strictly prohibiting a LLLT from acquiring a proprietary interest in a client's cause of action or the subject matter of the litigation). These prohibitions do not apply to any lawyers in a firm unless the conduct is also prohibited to a lawyer under this Rule.

RPC 1.9 DUTIES TO FORMER CLIENTS

[Unchanged.]

Comment

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[1] – [8] [Unchanged.]

[9] **[Washington revision]** The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0A(e). With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

RPC 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) Except as provided in paragraph (e), while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

(e) When the prohibition on representation under paragraph (a) is based on Rule 1.9(a) or (b), and arises out of the disqualified lawyer's association with a prior firm, no other lawyer in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified unless:

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(1) the personally disqualified lawyer is screened by effective means from participation in the matter and is apportioned no part of the fee therefrom;

(2) the former client of the personally disqualified lawyer receives notice of the conflict and the screening mechanism used to prohibit dissemination of information relating to the former representation;

(3) the firm is able to demonstrate by convincing evidence that no material information relating to the former representation was transmitted by the personally disqualified lawyer before implementation of the screening mechanism and notice to the former client.

Any presumption that information protected by Rules 1.6 and 1.9(c) has been or will be transmitted may be rebutted if the personally disqualified lawyer serves on his or her former law firm and former client an affidavit attesting that the personally disqualified lawyer will not participate in the matter and will not discuss the matter or the representation with any other lawyer or employee of his or her current law firm, and attesting that during the period of the lawyer's personal disqualification those lawyers or employees who do participate in the matter will be apprised that the personally disqualified lawyer is screened from participating in or discussing the matter. Such affidavit shall describe the procedures being used effectively to screen the personally disqualified lawyer. Upon request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The law firm, the personally disqualified lawyer, or the former client may seek judicial review in a court of general jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.

(f) When LLLTs and lawyers are associated in a firm, an LLLT's conflict of interest under LLLT RPC 1.7 or LLLT RPC 1.9 is imputed to lawyers in the firm in the same way as conflicts are imputed to lawyers under this Rule. Each of the other provisions of this Rule also applies in the same way when LLLT conflicts are imputed to lawyers in the firm.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

Comment

Definition of "Firm"

[1] **[Washington revision]** For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers, LLLTs, or any combination thereof in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers or LLLTs employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0A(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0A, Comments [2] - [4].

Principles of Imputed Disqualification

[2] – [5] [Unchanged.]

[6] **[Washington revision]** Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a definition of informed consent, see Rule 1.0A(e).

[7] – [8] [Unchanged.]

Additional Washington Comments [9-1314]

[9] – [10] [Unchanged.]

[11] Under Rule 5.3, this Rule also applies to nonlawyer assistants and lawyers who previously worked as nonlawyers at a law firm. See *Daines v. Alcatel*, 194 F.R.D. 678 (E.D. Wash. 2000); *Richard v. Jain*, 168 F. Supp. 2d 1195 (W.D. Wash. 2001). For the definition of nonlawyer for the purposes of Rule 5.3, see Washington Comment [3] to Rule 5.3.

[12] - [13] [Unchanged.]

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[14] For the parallel provision imputing lawyer conflicts to an LLLT when an LLLT has associated with a lawyer, see LLLT RPC 1.10(f).

RPC 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer or LLLT is disqualified from representation under paragraph (a) of this Rule or LLLT RPC 1.11, no lawyer in a firm with which that lawyer or LLLT is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer or LLLT is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 associated may undertake or continue representation in the matter only if the disqualified lawyer
2 is screened from any participation in the matter and is apportioned no part of the fee therefrom.

3 (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer
4 or employee:

5 (1) is subject to Rules 1.7 and 1.9; and

6 (2) shall not:

7 (i) participate in a matter in which the lawyer participated personally and substantially while in
8 private practice or non-governmental employment, unless the appropriate government agency
9 gives its informed consent, confirmed writing; or

10 (ii) negotiate for private employment with any person who is involved as a party or as lawyer for
11 a party in a matter in which the lawyer is participating personally and substantially, except that a
12 lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for
13 private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule
14 1.12(b).

15 (e) As used in this Rule, the term "matter" includes:

16 (1) any judicial or other proceeding, application, request for a ruling or other determination,
17 contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter
18 involving a specific party or parties; and

19 (2) any other matter covered by the conflict of interest rules of the appropriate government
20 agency.

21 **Comment**

22 [1] **Washington revision** A lawyer who has served or is currently serving as a public officer or
23 employee is personally subject to the Rules of Professional Conduct, including the prohibition
24 against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be
25 subject to statutes and government regulations regarding conflict of interest. Such statutes and
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SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 regulations may circumscribe the extent to which the government agency may give consent under
2 this Rule. See Rule 1.0A(e) for the definition of informed consent.

3 [2] – [5] [Unchanged.]

4 [6] **[Washington revision]** Paragraphs (b) and (c) contemplate a screening arrangement. See Rule
5 1.0A(k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from
6 receiving a salary or partnership share established by prior independent agreement, but that lawyer
7 may not receive compensation directly relating the lawyer's compensation to the fee in the matter
8 in which the lawyer is disqualified.

9 [7] – [10] [Unchanged.]

10 **RPC 1.12 FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY** 11 **NEUTRAL**

12 **(a)** Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a
13 matter in which the lawyer participated personally and substantially as a judge or other
14 adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party
15 neutral, unless all parties to the proceeding give informed consent confirmed in writing.

16 **(b)** A lawyer shall not negotiate for employment with any person who is involved as a party or as
17 lawyer for a party in a matter in which the lawyer is participating personally and substantially as
18 a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A
19 lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for
20 employment with a party or lawyer involved in a matter in which the clerk is participating
21 personally and substantially, but only after the lawyer has notified the judge or other adjudicative
22 officer.

23 **(c)** If a lawyer or LLLT is disqualified by paragraph (a) of this Rule or LLLT RPC 1.12, no lawyer
24 in a firm with which that lawyer or LLLT is associated may knowingly undertake or continue
25 representation in the matter unless:

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(1) the disqualified lawyer or LLLT is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Comment

[1] [Unchanged.]

[2] **[Washington revision]** Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0A(e) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

[3] [Unchanged]

[4] **[Washington revision]** Requirements for screening procedures are stated in Rule 1.0A(k). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[5] [Unchanged.]

RPC 1.13 ORGANIZATION AS CLIENT

[Unchanged.]

Comment

The Entity as the Client

[1] – [2] [Unchanged.]

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[3] **Washington revision** When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0A(f), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] – [14] [Unchanged.]

Additional Washington Comment (15)

[15] [Unchanged.]

RPC 1.14 CLIENT WITH DIMINISHED CAPACITY

[Unchanged.]

Comment

[1] – [9] [Unchanged.]

[10] **Washington revision** A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other ~~counsel~~legal practitioner involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

RPC 1.15A SAFEGUARDING PROPERTY

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 (a) This Rule applies to (1) property of clients or third persons in a lawyer's possession in
2 connection with a representation and (2) escrow and other funds held by a lawyer incident to the
3 closing of any real estate or personal property transaction.

4 (b) A lawyer must not use, convert, borrow or pledge client or third person property for the
5 lawyer's own use.

6 (c) A lawyer must hold property of clients and third persons separate from the lawyer's own
7 property.

8 (1) A lawyer must deposit and hold in a trust account funds subject to this Rule pursuant to
9 paragraph (h) of this Rule.

10 (2) Except as provided in Rule 1.5(f), and subject to the requirements of paragraph (h) of this
11 Rule, a lawyer shall deposit into a trust account legal fees and expenses that have been paid in
12 advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

13 (3) A lawyer must identify, label and appropriately safeguard any property of clients or third
14 persons other than funds. The lawyer must keep records of such property that identify the
15 property, the client or third person, the date of receipt and the location of safekeeping. The lawyer
16 must preserve the records for seven years after return of the property.

17 (d) A lawyer must promptly notify a client or third person of receipt of the client or third person's
18 property.

19 (e) A lawyer must promptly provide a written accounting to a client or third person after
20 distribution of property or upon request. A lawyer must provide at least annually a written
21 accounting to a client or third person for whom the lawyer is holding funds.

22 (f) Except as stated in this Rule, a lawyer must promptly pay or deliver to the client or third person
23 the property which the client or third person is entitled to receive.

24 (g) If a lawyer possesses property in which two or more persons (one of which may be the lawyer)
25 claim interests, the lawyer must maintain the property in trust until the dispute is resolved. The
26

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 lawyer must promptly distribute all undisputed portions of the property. The lawyer must take
2 reasonable action to resolve the dispute, including, when appropriate, interpleading the disputed
3 funds.

4 **(h)** A lawyer must comply with the following for all trust accounts:

5 (1) No funds belonging to the lawyer may be deposited or retained in a trust account except as
6 follows:

7 (i) funds to pay bank charges, but only in an amount reasonably sufficient for that purpose;

8 (ii) funds belonging in part to a client or third person and in part presently or potentially to the
9 lawyer must be deposited and retained in a trust account, but any portion belonging to the lawyer
10 must be withdrawn at the earliest reasonable time; or

11 (iii) funds necessary to restore appropriate balances.

12 (2) A lawyer must keep complete records as required by Rule 1.15B.

13 (3) A lawyer may withdraw funds when necessary to pay client costs. The lawyer may withdraw
14 earned fees only after giving reasonable notice to the client of the intent to do so, through a billing
15 statement or other document.

16 (4) Receipts must be deposited intact.

17 (5) All withdrawals must be made only to a named payee and not to cash. Withdrawals must be
18 made by check or by electronic transfer.

19 (6) Trust account records must be reconciled as often as bank statements are generated or at least
20 quarterly. The lawyer must reconcile the check register balance to the bank statement balance and
21 reconcile the check register balance to the combined total of all client ledger records required by
22 Rule 1.15B(a)(2).

23 (7) A lawyer must not disburse funds from a trust account until deposits have cleared the banking
24 process and been collected, unless the lawyer and the bank have a written agreement by which
25 the lawyer personally guarantees all deposits to the account without recourse to the trust account.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(8) Disbursements on behalf of a client or third person may not exceed the funds of that person on deposit. The funds of a client or third person must not be used on behalf of anyone else.

(9) Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the account. If a lawyer is associated in a practice with one or more LLLT's, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meet the requirements of ELC 15.7(d) and ELC 15.7(e). In the exercise of ordinary prudence, a lawyer may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ELC 15.7(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, a lawyer shall apply the following criteria:

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Lawyer's Trust Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ELC 15.4 and ELC 15.7(e).

(2) Client or third-person funds that will produce a positive net return to the client or third person must be placed in one of the following two types of non-IOLTA trust accounts, unless the client or third person requests that the funds be deposited in an IOLTA account:

(i) a separate interest-bearing trust account for the particular client or third person with earned interest paid to the client or third person; or

(ii) a pooled interest-bearing trust account with sub-accounting that allows for computation of interest earned by each client or third person's funds with the interest paid to the appropriate client or third person.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(3) In determining whether to use the account specified in paragraph (i)(1) or an account specified in paragraph (i)(2), a lawyer must consider only whether the funds will produce a positive net return to the client or third person, as determined by the following factors:

(i) the amount of interest the funds would earn based on the current rate of interest and the expected period of deposit;

(ii) the cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client or third person's benefit; and

(iii) the capability of financial institutions to calculate and pay interest to individual clients or third persons if the account in paragraph (i)(2)(ii) is used.

(4) The provisions of paragraph (i) do not relieve a lawyer or law firm from any obligation imposed by these Rules or the Rules for Enforcement of Lawyer Conduct.

(j) In any transaction in which a lawyer has selected, prepared, or completed legal documents for use in the closing of any real estate or personal property transaction, where funds received or held in connection with the closing of the transaction, including advances for costs and expenses, are not being held in that lawyer's trust account, the lawyer must ensure that such funds, including funds being held by a closing firm, are held and maintained as set forth in this rule or LPORPC 1.12A. The duty shall not apply to a lawyer whose participation in the matter is incidental to the closing if (i) the lawyer or lawyer's law firm has a preexisting lawyer-client relationship with a buyer or seller in the transaction, and (ii) neither the lawyer nor the lawyer's law firm has an existing client-lawyer relationship with a closing firm or LPO participating in the closing.

Washington Comments

[1] – [21] [Unchanged.]

[22] An LLLT who is signatory to a trust account under paragraph (h)(9) is subject to independent professional-ethical obligations that correspond to a lawyer's obligations under this Rule. See

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 LLLT RPC 1.15A. Partners and lawyers who individually or together with other lawyers possess
2 comparable managerial authority in a law firm that employ LLLTs, or in which LLLTs are
3 members, should also be aware of their obligations under Rule 5.10. These obligations extend to
4 making reasonable efforts to establish internal policies and procedures designed to provide
5 reasonable assurance that an LLLT's conduct in relation to the firm's trust account(s) is
6 compatible with these Rules of Professional Conduct. A lawyer with managerial or supervisory
7 authority over an LLLT who is signatory to a trust account under paragraph (h)(9) is also ethically
8 obligated to make reasonable efforts to ensure that the LLLT's conduct is compatible with the
9 LLLT's professional-ethical obligations. When a lawyer is a joint signatory on a trust account
10 with an LLLT, a lawyer should exercise direct supervisory authority over the activities of the
11 LLLT with respect to the account.

12 **RPC 1.15B REQUIRED TRUST ACCOUNT RECORDS**

13 [Unchanged.]

14 **Washington Comments**

15 [1] – [3] [Unchanged.]

16 **RPC 1.16 DECLINING OR TERMINATING REPRESENTATION**

17 **(a)** Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation
18 has commenced, shall, notwithstanding RCW 2.44.040, withdraw from the representation of a
19 client if:

- 20 (1) the representation will result in violation of the Rules of Professional Conduct or other law;
21 (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent
22 the client; or
23 (3) the lawyer is discharged.

24 **(b)** Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- 25 (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
26

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of another-counsel legal practitioner, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Comment

[1] – [9] [Unchanged]

RPC 1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) **[Reserved.]**

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain another counsel~~legal~~ practitioner or to take possession of the file;
and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

Comment

[1] – [5] [Unchanged.]

Sale of Entire Practice or Entire Area of Practice

[6] [Washington revision] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure another counsel~~legal~~ practitioner if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest. See also Washington Comment [17].

[7] – [9] [Unchanged].

Fee Arrangements Between Client and Purchaser

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[10] **Washington revision** The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser. See also Washington Comment [17].

Other Applicable Ethical Standards

[11] **Washington revision** Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0A(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] [Unchanged.]

Applicability of the Rule

[13] **Washington revision** This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a ~~non-lawyer~~ representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] – [15] [Unchanged]

Additional Washington Comments (16-19)

[16] If, at the time the notice under paragraph (c) is given, the buyer or seller knows of a conflict that would preclude the buyer from representing a client of the seller, the notice to that client should inform the client of the conflict and the need for the client to obtain a substitute ~~counsel~~ legal practitioner or retrieve the file. When such a conflict exists, the notice described in

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

paragraph (c)(3) cannot be given because there can be no presumption that the client's file will be transferred to the buyer.

Notice Requirements Related to LLLT Services

[17] Notice under paragraph (c) of this Rule must disclose whether legal services performed by LLLTs have been provided by the seller or will be provided by the purchaser of the law practice or area of practice that is subject to the sale. Where the purchaser will provide legal services performed by an LLLT, this notice must include written disclosures that comply with LLLT Rule 1.5(b). See RPC 1.5 Washington Comment [17].

[18] A purchaser is not required to employ or associate with an LLLT to provide legal services where the law practice or area of practice that is the subject of the sale includes legal services provided by LLLTs. However, the purchaser must honor existing agreements between client and seller as to fees and scope of work. Notice under paragraph (c) must include the purchaser's agreement to do so.

[19] An LLLT is not authorized to purchase a law practice that requires provision of legal services outside the scope of the LLLT's practice. See APR 28F-H; Appendix APR 28 Regulation 2. Consequently, a lawyer may not participate in or facilitate such a sale. See RPC 8.4(f)(2).

RPC 1.18 DUTIES TO PROSPECTIVE CLIENT

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client or except as provided in paragraph (e).

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraphs (d) or (e). If a lawyer or LLLT is disqualified from representation under this paragraph or paragraph (c) of LLLT RPC 1.18, no lawyer in a firm with which that lawyer or LLLT is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

(e) A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. The prospective client may also expressly consent to the lawyer's subsequent use of information received from the prospective client.

Comment

[1] – [4] [Unchanged.]

[5] **[Washington revision]** **[Reserved.** Comment [5] to Model Rule 1.18 is codified, with minor modifications, as paragraph (e). See Rule 1.0A(e) for the definition of informed consent.]

[6] [Unchanged.]

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[7] **Washington revision** Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0A(k) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] - [9] [Unchanged.]

Additional Washington Comments (10 - 13)

[10] – [13] [Unchanged.]

TITLE 2 – COUNSELOR

RPC 2.1 ADVISOR

[Unchanged.]

Comment

[1] – [5] [Unchanged.]

RPC 2.2 (DELETED)

[Unchanged.]

Washington Comment

[1] [Unchanged.]

RPC 2.3 EVALUATION FOR USE BY THIRD PERSONS

[Unchanged.]

Comment

[1] – [4] [Unchanged.]

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

Obtaining Client's Informed Consent

[5] **Washington revision** Information relating to an evaluation is protected by Rule 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. See Rule 1.6(a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rules 1.6(a) and 1.0A(e).

[6] [Unchanged.]

RPC 2.4 LAWYER SERVING AS THIRD-PARTY NEUTRAL

[Unchanged.]

Comment

[1] – [4] [Unchanged.]

[5] **Washington revision** Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0A(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

TITLE 3 – ADVOCATE

RPC 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

[Unchanged.]

Comment

[1] – [2] [Unchanged.]

[3] **Washington revision** The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

in presenting a claim or contention that otherwise would be prohibited by this Rule. For an explanation of the term “counsel” in the criminal context, see Washington Comment [10] to Rule 3.8.

RPC 3.2 EXPEDITING LITIGATION

[Unchanged.]

Comment

[1] [Unchanged.]

RPC 3.3 CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client unless such disclosure is prohibited by Rule 1.6;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by the opposing counsel~~party~~;

(4) offer evidence that the lawyer knows to be false.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding.

(c) If the lawyer has offered material evidence and comes to know of its falsity, the lawyer shall promptly disclose this fact to the tribunal unless such disclosure is prohibited by Rule 1.6.

(d) If the lawyer has offered material evidence and comes to know of its falsity, and disclosure of this fact is prohibited by Rule 1.6, the lawyer shall promptly make reasonable efforts to convince the client to consent to disclosure. If the client refuses to consent to disclosure, the lawyer may seek to withdraw from the representation in accordance with Rule 1.16.

(e) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(f) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment

[1] **[Washington revision]** This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0A(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition.

[2] – [6] [Unchanged.]

[7] **[Washington revision]** The duties stated in paragraphs (a) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions other than Washington, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See *State v. Berry*, 87 Wn. App. 268, 944 P.2d 397 (1997), review denied, 134 Wn.2d 1008, 954 P.2d 277 (1998). For an explanation of the term "counsel" in the criminal context, see Washington Comment [10] to Rule 3.8.

[8] **[Washington revision]** The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0A(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] – [15] [Unchanged.]

RPC 3.4 FAIRNESS TO OPPOSING PARTY ~~AND COUNSEL~~

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[Unchanged.]

Comment

[1] – [4] [Unchanged.]

Additional Washington Comment (5)

[5] [Unchanged.]

RPC 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

[Unchanged.]

Comment

[1] – [4]

[5] **Washington revision** The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0A(m).

RPC 3.6 TRIAL PUBLICITY

[Unchanged.]

Comments

[1] – [6] [Unchanged.]

[7] **Washington revision** Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer or LLLT, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] [Unchanged.]

Additional Washington Comment (9)

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[9] [Unchanged.]

RPC 3.7 LAWYER AS WITNESS

[Unchanged.]

Comments

[1] – [2] [Unchanged]

[3] **[Washington revision]** To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(4). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with a new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] – [5] [Unchanged.]

[6] **[Washington revision]** In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) or (a)(4) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0A(b) for the definition of "confirmed in writing" and Rule 1.0A(e) for the definition of "informed consent."

[7] [Unchanged.]

Additional Washington Comment (8)

[8] [Unchanged.]

RPC 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

[Unchanged.]

Comments

[1] – [6] [Unchanged.]

Additional Washington Comments (7-910)

[7] – [9] [Unchanged.]

[10] In many of the Lawyer RPC, the term "counsel" has been changed to "lawyer" to avoid ambiguity between a lawyer and an LLLT. The term "counsel" has been retained in this Rule, however, because this term in a criminal matter may implicate statutory and constitutional responsibilities that are not intended to be modified. The term "counsel" in this Rule nevertheless denotes a lawyer.

RPC 3.9 ADVOCATE IN NONADJUDICATIVE PROCEEDINGS

[Unchanged.]

Comments

[1] – [3] [Unchanged.]

TITLE 4 - TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

RPC 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[Unchanged.]

Comments

[1] – [3] [Unchanged.]

RPC 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL~~A~~ LAWYER

[Unchanged.]

Comment

[1] [Unchanged.]

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

[3] **[Washington revision]** The Rule applies even though the person represented ~~person~~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.

[4] **[Washington revision]** This Rule does not prohibit communication with a person represented ~~person~~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 for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a ~~represented 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

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 make. Also, a lawyer having independent justification or legal authorization for communicating
2 with a represented person is permitted to do so.

3 [5] [Unchanged.]

4 [6] **[Washington revision]** A lawyer who is uncertain whether a communication with a person
5 represented ~~person~~by a lawyer is permissible may seek a court order. A lawyer may also seek a
6 court order in exceptional circumstances to authorize a communication that would otherwise be
7 prohibited by this Rule, for example, where communication with a person represented by ~~counsel~~a
8 lawyer is necessary to avoid reasonably certain injury.

9 [7] **[Washington revision]** In the case of a represented organization, this Rule prohibits
10 communications with a constituent of the organization who supervises, directs or regularly
11 consults with the organization's lawyer concerning the matter or has authority to obligate the
12 organization with respect to the matter. Consent of the organization's lawyer is not required for
13 communication with a former constituent. If a constituent of the organization is represented in the
14 matter by his or her own ~~counsel~~lawyer, the consent by that ~~counsel~~lawyer to a communication
15 will be sufficient for purposes of this Rule. In communicating with a current or former constituent
16 of an organization, a lawyer must not use methods of obtaining evidence that violate the legal
17 rights of the organization. See Rule 4.4.

18 [8] **[Washington revision]** The prohibition on communication with a person represented
19 ~~person~~by a lawyer only applies in circumstances where the lawyer knows that the person is in fact
20 represented in the matter to be discussed. This means that the lawyer has actual knowledge of the
21 fact of the representation; but such actual knowledge may be inferred from the circumstances.
22 See Rule 1.0A(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of
23 ~~counsel~~another lawyer by closing eyes to the obvious.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

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

Additional Washington Comments (10-~~11~~12)

[10] [Unchanged]

[11] [Washington revision] ~~An person not~~ otherwise unrepresented ~~person~~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, he or she is 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)).

[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].

RPC 4.3 DEALING WITH UNREPRESENTED PERSON NOT REPRESENTED BY A LAWYER

In dealing on behalf of a client with a person who is not represented by ~~counsel~~a lawyer, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure ~~counsel~~the services of another legal practitioner, if the lawyer knows or reasonably should know that the interests of

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 such a person are or have a reasonable possibility of being in conflict with the interests of the
2 client.

3 **Comment**

4 [1] **Washington revision** An unrepresented person, particularly one not experienced in dealing
5 with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested
6 authority on the law even when the lawyer represents a client. In order to avoid a
7 misunderstanding, a lawyer will typically need to identify the lawyer's client and, where
8 necessary, explain that the client has interests opposed to those of the unrepresented person. For
9 misunderstandings that sometimes arise when a lawyer for an organization deals with an
10 unrepresented constituent, see Rule 1.13(f). For the definition of unrepresented person under this
11 Rule, see Washington Comment [5].

12 [2] **Washington revision** The Rule distinguishes between situations involving unrepresented
13 persons whose interests may be adverse to those of the lawyer's client and those in which the
14 person's interests are not in conflict with the client's. In the former situation, the possibility that
15 the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits
16 the giving of any advice, apart from the advice to obtain ~~counsel~~the services of another legal
17 practitioner. Whether a lawyer is giving impermissible advice may depend on the experience and
18 sophistication of the unrepresented person, as well as the setting in which the behavior and
19 comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction
20 or settling a dispute with an unrepresented person. So long as the lawyer has explained that the
21 lawyer represents an adverse party and is not representing the person, the lawyer may inform the
22 person of the terms on which the lawyer's client will enter into an agreement or settle a matter,
23 prepare documents that require the person's signature and explain the lawyer's own view of the
24 meaning of the document or the lawyer's view of the underlying legal obligations. For special

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 considerations that may arise when a lawyer deals with a person who is assisted by an LLLT, see
2 RPC 4.4 Comment [5].

3 **Additional Washington Comments (3 - 46)**

4 [3] – [4] [Unchanged.]

5 [5] For purposes of this Rule, a person who is assisted by an LLLT is not represented by a lawyer
6 and is an unrepresented person. See APR 28B(4).

7 [6] When a lawyer communicates with an LLLT who represents an opposing party about the
8 subject of the representation, the lawyer should be guided by an understanding of the limitations
9 imposed on the LLLT by APR 28H(6) (an LLLT shall not “negotiate the client's legal rights or
10 responsibilities, or communicate with another person the client's position or convey to the client
11 the position of another party”) and the LLLT RPC. The lawyer should further take care not to
12 overreach or intrude into privileged information. APR 28K(3) (“The Washington law of attorney-
13 client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the
14 Limited License Legal Technician-client relationship to the same extent as it would apply to an
15 attorney-client relationship”).

16 **RPC 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS**

17 [Unchanged]

18 **Comments**

19 [1] – [3] [Unchanged.]

20 **Additional Washington Comments (4-5)**

21 [4] The duty imposed by paragraph (a) of this Rule includes a lawyer’s assertion or inquiry about
22 a third person’s immigration status when the lawyer’s purpose is to intimidate, coerce, or obstruct
23 that person from participating in a civil matter. Issues involving immigration status carry a
24 significant danger of interfering with the proper functioning of the justice system. See *Salas v.*
25 *Hi-Tech Erectors*, 168 Wn.2d 664, 230 P.3d 583 (2010). When a lawyer is representing a client
26

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

in a civil matter, a lawyer's communication to a party or a witness that the lawyer will report that person to immigration authorities, or a lawyer's report of that person to immigration authorities, furthers no substantial purpose of the civil adjudicative system if the lawyer's purpose is to intimidate, coerce, or obstruct that person. A communication in violation of this Rule can also occur by an implied assertion that is the equivalent of an express assertion prohibited by paragraph (a). See also Rules 8.4(b) (prohibiting criminal acts that reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), 8.4(d) (prohibiting conduct prejudicial to the administration of justice), and 8.4(h) (prohibiting conduct that is prejudicial to the administration of justice toward judges, lawyers, LLLTs, other parties ~~and/or their counsel~~, witnesses ~~and/or their counsel~~, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status).

[5] A risk of unwarranted intrusion into a privileged relationship may arise when a lawyer deals with a person who is assisted by an LLLT. Although a lawyer may communicate directly with a person who is assisted by an LLLT, see Rule 4.2 Comment [12], client-LLLT communications are privileged to the same extent as client-lawyer communications. See APR 28K(3). An LLLT's ethical duty of confidentiality further protects the LLLT client's right to confidentiality in that professional relationship. See LLLT RPC 1.6(a). When dealing with a person who is assisted by an LLLT, a lawyer must respect these legal rights that protect the client-LLLT relationship.

TITLE 5 - LAW FIRMS AND ASSOCIATIONS

RPC 5.1 RESPONSIBILITIES OF A PARTNER OR SUPERVISORY LAWYER

[Unchanged.]

Comment

[1] [Washington revision] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0A(c). This includes members of a partnership, the

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[7] – [8] [Unchanged.]

RPC 5.2 RESPONSIBILITIES OF A SUBORDINATE LAWYER

[Unchanged.]

Comment

[1] – [2] [Unchanged.]

RPC 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

[Unchanged.]

Comment

[1] – [2] [Unchanged.]

Additional Washington Comment (3)

[3] A nonlawyer for purposes of this Rule denotes an individual other than a lawyer or an LLLT. For responsibilities regarding an LLLT associated with a lawyer, see Rule 5.10.

RPC 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

[Unchanged.]

Comment

[1] - [2] [Unchanged.]

Additional Washington Comments (3-4)

[3] [Unchanged.]

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

**SUGGESTED AMENDMENTS TO
RULES OF PROFESSIONAL CONDUCT**

**RPC 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL
PRACTICE OF LAW**

[Unchanged.]

Comment

[1] – [2]

[3] [Washington revision] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist LLLTs and other independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] – [21] [Unchanged.]

RPC 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer or an LLLT to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Comment

[1] - [3] [Unchanged.]

Additional Washington Comment (4)

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[4] The prohibition in paragraph (a) on offering or making agreements restricting a lawyer's right to practice also applies to LLLTs. An LLLT is prohibited from entering into an agreement restricting the right to practice as part of a settlement under LLLT RPC 5.6(b).

RPC 5.7 RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

[Unchanged.]

Comment

[1] – [11] [Unchanged.]

Additional Washington Comment (12)

[12] A nonlawyer for purposes of this Rule denotes an individual other than a lawyer or an LLLT.

RPC 5.8 MISCONDUCT INVOLVING ~~DISBARRED, SUSPENDED, RESIGNED, AND~~ INACTIVE LAWYERS AND LLLTs NOT ACTIVELY LICENSED TO PRACTICE **LAW**

(a) A lawyer shall not engage in the practice of law while on inactive status, or while suspended from the practice of law for any cause.

(b) A lawyer shall not engage in any of the following with ~~an individual~~ a lawyer or LLLT who is ~~a-disbarred or suspended lawyer~~ or who has resigned in lieu of disbarment or discipline or whose license has been revoked or voluntarily cancelled in lieu of discipline:

(1) practice law with or in cooperation with such an individual;

(2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;

(3) permit such an individual to use the lawyer's name for the practice of law;

(4) practice law for or on behalf of such an individual; or

(5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.

Washington Comment

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

[1] [Unchanged.]

[2] The prohibitions in paragraph (b) of this Rule apply to suspensions, revocations and voluntary cancellations in lieu of discipline under the disciplinary procedural rules applicable to LLLTs. See LLLT Rules for Enforcement of Conduct (REC).

RPC 5.9 BUSINESS STRUCTURES INVOLVING LLLT AND LAWYER OWNERSHIP

(a) Notwithstanding the provisions of Rule 5.4, a lawyer may:

(1) share fees with an LLLT who is in the same firm as the lawyer;

(2) form a partnership with an LLLT where the activities of the partnership consist of the practice of law; or

(3) practice with or in the form of a professional corporation, association, or other business structure authorized to practice law for a profit in which an LLLT owns an interest or serves as a corporate director or officer or occupies a position of similar responsibility.

(b) A lawyer and an LLLT may practice in a jointly owned firm or other business structure authorized by paragraph (a) of this rule only if:

(1) LLLTs do not direct or regulate any lawyer's professional judgment in rendering legal services;

(2) LLLTs have no direct supervisory authority over any lawyer;

(3) LLLTs do not possess a majority ownership interest or exercise controlling managerial authority in the firm; and

(4) lawyers with managerial authority in the firm expressly undertake responsibility for the conduct of LLLT partners or owners to the same extent they are responsible for the conduct of lawyers in the firm under Rule 5.1.

Comment

[1] This Rule authorizes lawyers to enter into some fee-sharing arrangements and for-profit business relationships with LLLTs. It is designed as an exception to the general prohibition stated

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 in Rule 5.4 that lawyers may not share fees or enter into business relationships with individuals
2 other than lawyers.

3 [2] In addition to expressly authorizing fee-sharing and business structures between LLLTs and
4 lawyers in paragraph (a), paragraph (b) of the Rule sets forth limitations on the role of LLLTs in
5 jointly owned firms, specifying that regardless of an LLLT's ownership interest in such a firm,
6 the business may not be structured in a way that permits LLLTs directly or indirectly to supervise
7 lawyers or to otherwise direct or regulate a lawyer's independent professional judgment. This
8 includes a limitation on LLLTs possessing a majority ownership interest or controlling
9 managerial authority in a jointly owned firm, a structure that could result indirectly in non-lawyer
10 decision-making affecting the professional independence of lawyers. Lawyer managers, by
11 contrast, will be required to undertake responsibility for a firm's LLLT owners by expressly
12 assuming responsibility for their conduct to the same extent as they are responsible for the conduct
13 of firm lawyers. See also Rule 5.10.

RPC 5.10 RESPONSIBILITIES REGARDING OTHER LEGAL PRACTITIONERS

15 With respect to an LLLT employed or retained by or associated with a lawyer:

16 (a) a partner and a lawyer who individually or together with other lawyers possesses comparable
17 managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in
18 effect measures giving reasonable assurance that the LLLT's conduct is compatible with the
19 professional obligations of the lawyer and the professional obligations applicable to the LLLT
20 directly;

21 (b) a lawyer having direct supervisory authority over the LLLT shall make reasonable efforts to
22 ensure that the LLLT's conduct is compatible with the professional obligations of the lawyer and
23 the professional obligations applicable to the LLLT directly; and

24 (c) a lawyer shall be responsible for conduct of an LLLT that would be a violation of the Rules
25 of Professional Conduct if engaged in by a lawyer if:

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved;
or
(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the LLLT is employed, or has direct supervisory authority over the LLLT, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Lawyers may employ, hire, or associate with LLLTs. As with a lawyer's obligations under Rule 5.3 with respect to nonlawyer assistants, a lawyer with managerial authority over LLLTs must make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that LLLTs in the firm will act in a way compatible with the Rules of Professional Conduct, and a lawyer with supervisory authority over an LLLT must make reasonable efforts to ensure that the LLLT's conduct is compatible with the professional obligations of the lawyer. In addition, LLLTs are subject to the LLLT RPC and APR 28. A lawyer with managerial or supervisory authority over an LLLT is also ethically obligated to make reasonable efforts to ensure that the LLLT's conduct is compatible with these specific professional and ethical obligations.

TITLE 6 - PUBLIC SERVICE

RPC 6.1 PRO BONO PUBLICO SERVICE

[Unchanged.]

Comment

[1] – [2]

[3] **[Washington revision]** Persons eligible for legal services under paragraphs (a)(1) are those who qualify for services provided by a qualified legal services provider (see Washington Comment [14]) and those whose incomes and financial resources are slightly above the guidelines

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

utilized by such programs but nevertheless, cannot afford ~~ee~~unsellegal services. Legal services under paragraphs (a)(1) and (2) include those rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[6] - [12] [Unchanged.]

Additional Washington Comments (13 - 16)

[13] – [16] [Unchanged.]

RPC 6.2 ACCEPTING APPOINTMENTS

[Unchanged.]

Comment

[1] – [3] [Unchanged.]

RPC 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

[Unchanged.]

Comment

[1] – [2] [Unchanged.]

RPC 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

[Unchanged.]

Comment

[1] [Unchanged.]

RPC 6.5 NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICE PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

the client that the lawyer will provide continuing representation in the matter and without expectation that the lawyer will receive a fee from the client for the services provided:

(1) is subject to Rules 1.7, 1.9(a), and 1.18(c) only if the lawyer knows that the representation of the client involves a conflict of interest, except that those Rules shall not prohibit a lawyer from providing limited legal services sufficient only to determine eligibility of the client for assistance by the program and to make an appropriate referral of the client to another program;

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer or LLLT associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) or by LLLT RPC 1.7 and LLLT RPC 1.9(a) with respect to the matter; and

(3) notwithstanding paragraphs (1) and (2), is not subject to Rules 1.7, 1.9(a), 1.10, or 1.18(c) in providing limited legal services to a client if:

(i) the program lawyers or LLLTs representing the opposing clients are screened by effective means from information relating to the representation of the opposing client;

(ii) each client is notified of the conflict and the screening mechanism used to prohibit dissemination of information relating to the representation; and

(iii) the program is able to demonstrate by convincing evidence that no material information relating to the representation of the opposing client was transmitted by the personally disqualified lawyers or LLLTs to the lawyer representing the conflicting client before implementation of the screening mechanism and notice to the opposing client.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Comment

[1] [Unchanged]

[2] **[Washington revision]** A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 Rule 1.2(c). If a short-term limited representation would not be reasonable under the
2 circumstances, the lawyer may offer advice to the client but must also advise the client of the
3 need for further assistance of ~~counsel~~ a legal practitioner. Except as provided in this Rule, the
4 Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited
5 representation.

6 [4] – [5] [Unchanged.]

7 **Additional Washington Comments (6 - 7)**

8 [6] – [7] [Unchanged.]

9 **TITLE 7 - INFORMATION ABOUT LEGAL SERVICES**

10 **RPC 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

11 [Unchanged.]

12 **Comment**

13 [1] – [4] [Unchanged.]

14 **RPC 7.2 ADVERTISING**

15 **(a)** Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through
16 written, recorded or electronic communication, including public media.

17 **(b)** A lawyer shall not give anything of value to a person for recommending the lawyer's services,
18 except that a lawyer may

19 (1) pay the reasonable cost of advertisements or communications permitted by this Rule;

20 (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

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

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

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

25 (ii) the client is informed of the existence and nature of the agreement.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Comment

[1] – [4]

Paying Others to Recommend a Lawyer

[5] **[Washington revision]** Lawyers are not permitted to pay others for channeling professional work. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, online directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them. For the definition of nonlawyer for the purposes of Rule 5.3, see Washington Comment [3] to Rule 5.3.

[6] - [8] [Unchanged.]

Additional Washington Comment (9)

[9] That portion of Model Rule 7.2(b)(4) that allows lawyers to enter into reciprocal referral agreements with nonlawyer professionals was not adopted. A lawyer may agree to refer clients to an LLLT in return for the undertaking of that person to refer clients to the lawyer. The guidance provided in Comment [8] to this Rule is also applicable to reciprocal referral arrangements between lawyers and LLLTs. Under LLLT RPC 1.5(e), however, an LLLT may not enter into an arrangement for the division of a fee with a lawyer who is not in the same firm as the LLLT.

RPC 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(a) A lawyer shall not directly or through a third person, by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer or an LLLT;

(2) has a family, close personal, or prior professional relationship with the lawyer; or

(3) has consented to the contact by requesting a referral from a not-for-profit lawyer referral service.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if;

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

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

(c) **[Reserved.]**

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment

[1] – [3] [Unchanged.]

[4] **[Washington revision]** There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer or an LLLT. Consequently, the general prohibition in Rule 7.3(a) is not

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[5] – [8] [Unchanged.]

Additional Washington Comments (9-12)

[9] – [12] [Unchanged.]

RPC 7.4 COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

[Unchanged.]

Comment

[1] – [3] [Unchanged.]

Additional Washington Comments (4-5)

[4] [Unchanged.]

[5] In advertising concerning an LLLT's services, an LLLT is required to communicate the fact that the LLLT has a limited license in the particular fields of law for which the LLLT is licensed and must not state or imply that the LLLT has broader authority to practice than is in fact the case. See LLLT RPC 7.4(a); see also LLLT RPC 7.2(c) (advertisements must include the name and office address of at least one responsible LLLT or law firm). When lawyers and LLLTs are associated in a firm, lawyers with managerial or pertinent supervisory authority must take measures to assure that the firm's communications conform with these obligations. See Rule 5.10.

RPC 7.5 FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers or LLLTs in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer or LLLT holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer or LLLT is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.

Comment

[1] **Washington revision** A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer or LLLT not associated with the firm or a predecessor of the firm, or the name of a ~~nonlawyer~~ an individual who is neither a lawyer nor an LLLT.

[2] **Washington revision** With regard to paragraph (d), lawyers or LLLTs sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

Additional Washington Comments (3-4)

[3] When lawyers and LLLTs are associated with each other in a law firm, the firm may be designated using the name of a member LLLT if the name is not otherwise in violation of Rule 7.1, this Rule, or LLLT RPC 7.5. See also Washington Comment [4] to this Rule.

[4] Lawyers or LLLTs practicing out of the same office who are not partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership may not join their names together. Lawyers or LLLTs who are not 1) partners, shareholders of a professional corporation, or members of a professional limited liability company or partnership, or 2) employees of a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, or 3) in the relationship of being "Of Counsel" to a sole proprietorship, partnership, professional corporation, or members of a professional limited liability company or partnership or other organization, must have separate letterheads, cards and pleading paper, and must sign their names individually at the end of all pleadings and correspondence and not in conjunction with the names of other lawyers or LLLTs. (The provisions of this Comment were taken from former Washington RPC 7.5(d).)

RPC 7.6 POLITICAL CONTRIBUTIONS TO OBTAIN GOVERNMENT LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGES

[Unchanged.]

Comment

[1] –[8] [Unchanged.]

TITLE 8 - MAINTAINING THE INTEGRITY OF THE PROFESSION

RPC 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

An applicant for admission to the Bar, or a lawyer in connection with a bar admission–or, reinstatement application, or LLLT limited licensure, or in connection with a lawyer or LLLT disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Comment

[1]- [2] [Unchanged.]

[3] [Washington revision] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, or representing an LLLT in relation to an application for limited licensure under APR 28 or disciplinary matter is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

Additional Washington Comments (4-5)

[4] [Unchanged.]

[5] The corollary duties of applicants for limited licensure under APR 28 are set forth in LLLT

RPC 8.1.

RPC 8.2 JUDICIAL AND LEGAL OFFICIALS

[Unchanged.]

Comment

[1] – [3] [Unchanged.]

RPC 8.3 REPORTING PROFESSIONAL MISCONDUCT

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(a) A lawyer who knows that another lawyer or LLLT has committed a violation of the applicable Rules of Professional Conduct that raises a substantial question as to that lawyer's or LLLT's honesty, trustworthiness or fitness as a lawyer or LLLT in other respects, should inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office should inform the appropriate authority.

(c) This Rule does not permit a lawyer to report the professional misconduct of another lawyer, judge, or LLLT ~~or a judge~~ to the appropriate authority if doing so would require the lawyer to disclose information otherwise protected by Rule 1.6.

Comment

[1] **[Washington revision]** Lawyers are not required to report the misconduct of other lawyers, LLLTs, or judges. Self-regulation of the legal profession, however, creates an aspiration that members of the profession report misconduct to the appropriate disciplinary authority when they know of a serious violation of the applicable Rules of Professional Conduct. Lawyers have a similar aspiration with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] **[Reserved.]**

[3] **[Washington revision]** While lawyers are not obliged to report every violation of the applicable Rules, the failure to report a serious violation may undermine the belief that lawyers the legal profession should be a self-regulating profession. A measure of judgment is, therefore, required in deciding whether to report a violation. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made whenever a lawyer's or LLLT's conduct raises a serious question as to the

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

honesty, trustworthiness or fitness to practice. Similar considerations apply to the reporting of judicial misconduct.

[4] [Washington revision] This Rule does not apply to a lawyer retained to represent a lawyer, LLLT, or judge whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] [Washington revision] Information about a lawyer's, LLLT's, or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, there is no requirement or aspiration of reporting. Admission to Practice Rule 19(b) makes confidential communications between lawyer-clients and staff or peer counselors of the Lawyers' Assistance Program (LAP) of the WSBA privileged. Likewise, Discipline Rule for Judges 14(e) makes confidential communications between judges and peer counselors and the Judicial Assistance Committees of the various judges associations or the LAP of the WSBA privileged. Lawyers and judges should not hesitate to seek assistance from these programs and to help prevent additional harm to their professional careers and additional injury to the welfare of clients and the public.

RPC 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

1 (f) knowingly

2 (1) assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial
3 conduct or other law, or

4 (2) assist or induce an LLLT in conduct that is a violation of the applicable rules of professional
5 conduct or other law;

6 (g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed,
7 religion, color, national origin, disability, sexual orientation, or marital status, where the act of
8 discrimination is committed in connection with the lawyer's professional activities. In addition, it
9 is professional misconduct to commit a discriminatory act on the basis of sexual orientation if
10 such an act would violate this rule when committed on the basis of sex, race, age, creed, religion,
11 color, national origin, disability, or marital status. This Rule shall not limit the ability of a lawyer
12 to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

13 (h) in representing a client, engage in conduct that is prejudicial to the administration of justice
14 toward judges, lawyers, or LLLTs, other parties ~~and/or their counsel~~, witnesses ~~and/or their~~
15 ~~counsel~~, jurors, or court personnel or officers, that a reasonable person would interpret as
16 manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin,
17 disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from
18 representing a client by advancing material factual or legal issues or arguments.

19 (i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or
20 other act which reflects disregard for the rule of law, whether the same be committed in the course
21 of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or
22 misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a
23 criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal
24 or dismissal thereof preclude the commencement of a disciplinary proceeding;

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

(j) willfully disobey or violate a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;

(k) violate his or her oath as an attorney;

(l) violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5;

(m) violate the Code of Judicial Conduct; or

(n) engage in conduct demonstrating unfitness to practice law.

Comment

[1] [Washington revision] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Lawyers are also subject to discipline if they assist or induce an LLLT to violate the LLLT RPC. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] - [5] [Unchanged.]

Additional Washington Comments (6-7)

[6] Paragraphs (g) - (n) were taken from former Washington RPC 8.4 (as amended in 2002).

[7] Under paragraph (f)(2), lawyers are also subject to discipline if they assist or induce an LLLT to violate the LLLT RPC. See also Rule 4.3 Washington Comment [6].

RPC 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW

[Unchanged.]

Comment

[1] - [7] [Unchanged.]

Additional Washington Comments (8 - 13)

**SUGGESTED AMENDMENTS TO
RULES OF PROFESSIONAL CONDUCT**

[8] – [13] [Unchanged.]

APPENDIX GUIDELINES FOR APPLYING RULE OF PROFESSIONAL CONDUCT 3.6

I. Criminal

[Unchanged.]

II. Civil

[Unchanged.]