

**FILED**  
DEC - 6 2017  
WASHINGTON STATE  
SUPREME COURT

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE PROPOSED )  
AMENDMENTS TO RPC 1.0A — )  
TERMINOLOGY, RPC 1.10 — IMPUTATION OF )  
CONFLICTS OF INTEREST: GENERAL RULE, )  
AND RPC 1.11 — SPECIAL CONFLICTS OF )  
INTEREST FOR FORMER AND CURRENT )  
GOVERNMENT OFFICERS AND EMPLOYEES )  
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**ORDER**  
NO. 25700-A-1211

The Washington State Bar Association, having recommended the adoption of the proposed amendments to RPC 1.0A — Terminology, RPC 1.10 — Imputation of Conflicts of Interest: General Rule, and RPC 1.11 — Special Conflicts of Interest for Former and Current Government Officers and Employees, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

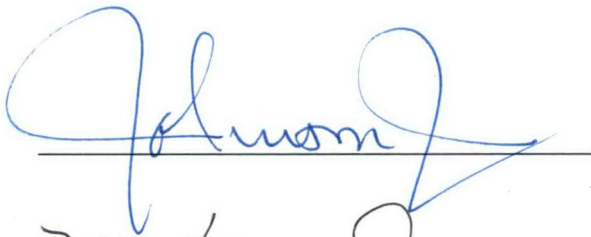
- (a) That the proposed amendments as attached hereto are adopted.
- (b) That the proposed amendments will be published in the Washington Reports and will become effective September 1, 2018.

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ORDER

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RPC 1.0A —  
TERMINOLOGY, RPC 1.10 — IMPUTATION OF CONFLICTS OF INTEREST: GENERAL  
RULE, AND RPC 1.11 — SPECIAL CONFLICTS OF INTEREST FOR FORMER AND  
CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

DATED at Olympia, Washington this 6<sup>th</sup> day of December, 2017.

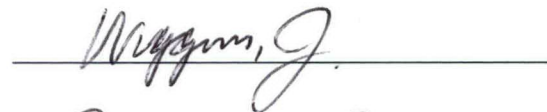


Madsen, J.

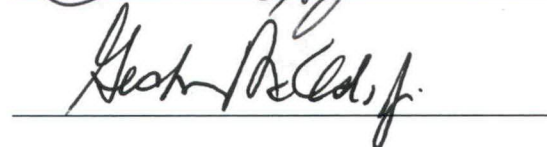


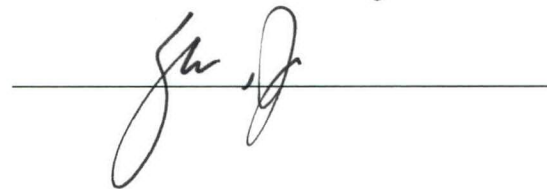
Steyn, J.

Fainhurst, J.



Conzalez, J.





# RULES OF PROFESSIONAL CONDUCT (RPC)

## RULE 1.0A – TERMINOLOGY

1 (a) - (n) [Unchanged.]

### 2 Comment

3 [1] – [3] [Unchanged.]

#### 4 Firm

5 [4] Similar questions can also arise with respect to lawyers in legal aid and legal services  
6 organizations. Depending upon the structure of the organization, the entire organization or  
7 different components of it may constitute a firm or firms for purposes of these Rules.

8 See also Washington Comments [12] and [13].

#### 9 Fraud

10 [5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is  
11 characterized as such under the substantive or procedural law of the applicable jurisdiction and  
12 has a purpose to deceive. This does not include merely negligent misrepresentation or negligent  
13 failure to apprise another of relevant information. For purposes of these Rules, it is not necessary  
14 that anyone has suffered damages or relied on the misrepresentation or failure to inform.

15 See also Washington Comment [13] [14].

#### 16 Informed Consent

17 [6] [Unchanged.]

18 [7] [Washington revision] Obtaining informed consent will usually require an affirmative  
19 response by the client or other person. In general, a lawyer may not assume consent from a  
20 client's or other person's silence. Consent may be inferred, however, from the conduct of a client  
21 or other person who has reasonably adequate information about the matter. A number of Rules  
22 require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a  
23 definition of "writing" and "confirmed in writing," see paragraphs (n) and (b). Rule 1.8(a)  
24 requires that a client's consent be obtained in a writing signed by the client. See also Rule  
25 1.5(c)(1) (requiring that a contingent fee agreement be "in a writing signed by the client"). For a  
26 definition of "signed," see paragraph (n).

See also Washington Comment [14] [15].

#### Screened

[8] – [9] [Unchanged.]

1 [10] **[Washington revision]** In order to be effective, screening measures must be  
2 implemented as soon as practical after a lawyer, LLLT, or law firm knows or reasonably should  
3 know that there is a need for screening.

4 See also Washington Comment ~~[15]~~ [16].

5 Additional Washington Comments (11 - ~~16~~ 17)

6 [11] – [12] [Unchanged.]

7 [13] An office or subdivision of an organization employing lawyers who are appointed or  
8 assigned to represent indigent members of the public is considered a separate law firm if it is  
9 fully independent from other units of the organization including physical separation and no  
10 shared access to client information.

11 Fraud

12 ~~[13]~~ [14] Model Rule 1.0A(d) was modified to clarify that the terms "fraud" and  
13 "fraudulent" in the Rules of Professional Conduct do not include an element of damage or  
14 reliance.

15 Informed Consent

16 ~~[14]~~ [15] In order for the communication to the client to be adequate it must be  
17 accomplished in a manner that can be easily understood by the client.

18 Screened

19 ~~[15]~~ [16] See Rules 1.10 and 6.5 for specific screening requirements under the  
20 circumstances covered by those Rules.

21 Other

22 ~~[16]~~ [17] For the scope of the phrase "information relating to the representation of a client,"  
23 which is not defined in Rule 1.0A, see Comment [19] to Rule 1.6.  
24  
25  
26

# RULES OF PROFESSIONAL CONDUCT (RPC)

## RULE 1.10. IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

1  
2 (a) - (c) [Unchanged.]

3 (d) The disqualification of lawyers associated in a firm with former or current government  
4 lawyers is governed by Rule 1.11. However, lawyers appointed or assigned to represent indigent  
5 members of the public (public defenders) are subject to this rule regardless of whether they are  
6 government employees.

7 (e) - (f) [Unchanged.]

### 8 **Comment**

9 [1] - [8] [Unchanged.]

10 Additional Washington Comments (9 - ~~13~~ 15)

11 [9] - [14] [Unchanged.]

12 [15] Public defenders represent individuals, not the government. For this reason, imputed  
13 conflicts in public defender firms are determined under this rule rather than RPC 1.11.

# RULES OF PROFESSIONAL CONDUCT (RPC)

## RULE 1.11. SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

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(a) - (e) [Unchanged.]

### Comment

[1] – [10] [Unchanged.]

#### Additional Washington Comment (11)

[11] Public defenders represent individuals, not the government. For this reason, imputed conflicts in public defender firms are determined under RPC 1.10 rather than this rule regardless of whether the lawyers are public officers or employees.