Ethical Considerations in Consumer Protection Litigation

AILA Consumer Protection and Immigration Services Fraud Prevention Act Claims CLE
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JEANNE MARIE CLAVERE is a 1987 graduate of the University Of Puget Sound School Of Law (now Seattle University School of Law). Prior to earning her law degree she received a Master of Business Administration from DePaul University in Chicago. In February, 2010 she joined the staff of the Washington State Bar Association as Professional Responsibility Counsel. After four years in a Seattle law firm, Jeanne Marie began her solo practice in 1992, focusing on estate planning, elder law (including complex guardianships, trusts, and guardian ad litem appointments), and contract based criminal prosecution. As Professional Responsibility Counsel, Jeanne Marie serves as an advisor to members of the bar on the Rules of Professional Conduct as they apply to WSBA Advisory Ethics Opinions, the Rules for Enforcement of Lawyer Conduct, and the ABA Standards for Imposing Lawyer Sanctions. She has been invited to lecture on Professionalism, Civility, and Ethics at all three Washington law schools, and speaks at various local bar CLE’s throughout the state. Jeanne Marie is the primary responder on the WSBA Ethics Line and wants every attendee to commit the number to memory and call her first, not after they run into an ethical dilemma.

While in private practice Jeanne Marie appeared before a wide range of courts and tribunals, ranging from Ex Parte hearings to trials on guardianship and criminal issues, and served for many years as a Settlement, Litigation, Adoption, Family Law, Incapacity and Probate Guardian ad Litem in King and Snohomish Counties. Jeanne Marie is past president of the state Washington Women Lawyers, past chair of the Washington State Bar Association Elder Law Section and served on the executive committee of the King County Bar Association Guardianship and Elder Law Section. She is a member of the American Bar Association and the ABA’s Center for Professional Responsibility and the ABA Law Practice Division.

Opinions expressed herein are the author’s and do not necessarily represent the official or unofficial position of the Washington State Bar Association or the WSBA Office of General Counsel. Members seeking guidance or information about ethics may contact WSBA Professional Responsibility Counsel on the Ethics Line at 206-727-8284 / 800-945-WSBA ext. 8284.
GR 24; Selected Rules of Professional Conduct
GENERAL RULE 24

DEFINITION OF THE PRACTICE OF LAW

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a courthouse facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Non-lawyer Assistants: Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide
information of a general nature about the law and legal procedures to members of the public.

(e) Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

[Adopted effective September 1, 2001; amended effective April 30, 2002.]
RPC 1.1
COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Retaining or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] [Washington revision] When lawyers or LLLTs from more than one law firm are providing legal services to the client on a particular matter, the lawyers and/or LLLTs ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers, LLLTs, and parties may have additional obligations that are a matter of law beyond the scope of these Rules.
Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Additional Washington Comments (9-10)

[9] This rule applies to lawyers only when they are providing legal services. Where a lawyer is providing nonlawyer services ("supporting lawyer") in support of a lawyer who is providing legal services ("supported lawyer"), the supported lawyer should treat the supporting lawyer as a nonlawyer assistant for purposes of this rule and Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants).

[10] 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 1.4
COMMUNICATION

(a) A lawyer shall:
(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0A(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) keep the client reasonably informed about the status of the matter;
(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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

Comment

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

Communicating with Client

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

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations - depending on both the importance of the action under consideration and the feasibility of consulting with the client - this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

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

Explaining Matters

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

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

**Withholding Information**

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.
RPC 1.5
FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
(8) whether the fee is fixed or contingent; and
(9) the terms of the fee agreement between the lawyer and the client, including whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer’s billing practices.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client. Upon the request of the client in any matter, the lawyer shall communicate to the client in writing the basis or rate of the fee.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. If a fee is contingent on the outcome of a matter, a lawyer shall comply with the following:

(1) A contingent fee agreement shall be in a writing and signed by the client;
(2) A contingent fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable, whether or not the client is the prevailing party;
(3) Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination; and
(4) A contingent fee consisting of a percentage of the monetary amount recovered for a claimant, in which all or part of the recovery is to be paid in the future, shall be paid only
   (i) by applying the percentage to the amounts recovered as they are received by the client; or
   (ii) by applying the percentage to the actual cost of the settlement or award to the defendant.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution or annulment of marriage or upon the amount of maintenance or support, or property settlement in lieu thereof; or
(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) (i) the division is in proportion to the services provided by each lawyer or each lawyer assumes joint responsibility for the representation;
   (ii) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
   (iii) the total fee is reasonable; or
(2) the division is between the lawyer and a duly authorized lawyer referral service of either the Washington State Bar Association or of one of the county bar associations of this state.
(f) Fees and expenses paid in advance of performance of services shall comply with Rule 1.15A, subject to the following exceptions:

(1) A lawyer may charge a retainer, which is a fee that a client pays to a lawyer to be available to the client during a specified period or on a specified matter, in addition to and apart from any compensation for legal services performed. A retainer must be agreed to in a writing signed by the client. Unless otherwise agreed, a retainer is the lawyer's property on receipt and shall not be placed in the lawyer's trust account.

(2) A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for those services and is paid in whole or in part in advance of the lawyer providing the services. If agreed to in advance in a writing signed by the client, a flat fee is the lawyer's property on receipt, in which case the fee shall not be deposited into a trust account under Rule 1.15A. The written fee agreement shall, in a manner that can easily be understood by the client, include the following:

(i) the scope of the services to be provided;
(ii) the total amount of the fee and the terms of payment;
(iii) that the fee is the lawyer's property immediately on receipt and will not be placed into a trust account;
(iv) that the fee agreement does not alter the client's right to terminate the client-lawyer relationship; and
(v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed. A statement in substantially the following form satisfies this requirement:

[Lawyer/law firm] agrees to provide, for a flat fee of $__________, the following services:

The flat fee shall be paid as follows:

Upon [lawyer's/law firm's] receipt of all or any portion of the flat fee, the funds are the property of [lawyer/law firm] and will not be placed in a trust account. The fact that you have paid your fee in advance does not affect your right to terminate the client-lawyer relationship. In the event our relationship is terminated before the agreed-upon legal services have been completed, you may or may not have a right to a refund of a portion of the fee.

(3) In the event of a dispute relating to a fee under paragraph (f)(1) or (f)(2) of this Rule, the lawyer shall take reasonable and prompt action to resolve the dispute.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (9) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

See also Washington Comments [10] and [11].

Basis or Rate of Fee

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

[3] [Reserved in part.] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances.

Terms of Payment
[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees

[6] [Washington revision] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a dissolution or annulment of marriage or upon the amount of maintenance or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, maintenance or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee

[7] [Washington revision] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often 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 Rule 1.1, comments [6] and [10] as to decisions to associate other lawyers or LLLTs. See also Washington Comment [18].

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Additional Washington Comments (10 - 19)

Reasonableness of Fee and Expenses

[10] Every fee agreed to, charged, or collected, including a fee that is a lawyer's property on receipt under paragraph (f)(1) or (f)(2), is subject to Rule 1.5(a) and may not be unreasonable.

[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.
Payment of Fees in Advance of Services

[12] In the absence of a written agreement between the lawyer and the client to the contrary that complies with paragraph (f)(1) or (f)(2), all advance payments are presumed to be deposits against future services or costs and must, until the fee is earned or the cost incurred, be held in a trust account pursuant to Rule 1.15A. See Rule 1.15A(c)(2). This fee structure is known as an "advance fee deposit." Such a fee may only be withdrawn when earned. See Rule 1.15A(h)(3). For example, when an advance fee deposit is placed in trust, a lawyer may withdraw amounts based on the actual hours worked. In the case of a flat fee that constitutes an advance fee deposit because it does not meet the requirements of paragraph (f)(2), the lawyer and client may mutually agree, preferably in writing, on a reasonable basis for determining when portions of the fee have been earned, such as specific "milestones" reached during the representation or specified time intervals that reasonably reflect the actual performance of the legal services.

[13] Paragraphs (f)(1) and (f)(2) provide exceptions to the general rule that fees received in advance must be placed in trust. Paragraph (f)(1) describes a fee structure sometimes known as an "availability retainer," "engagement retainer," "true retainer," "general retainer," or "classic retainer." Under these rules, this arrangement is called a "retainer." A retainer secures availability alone, i.e., it presumes that the lawyer is to be additionally compensated for any actual work performed. Therefore, a payment purportedly made to secure a lawyer's availability, but that will be applied to the client's account as the lawyer renders services, is not a retainer under paragraph (f)(1). A written retainer agreement should clearly specify the time period or purpose of the lawyer's availability, that the client will be separately charged for any services provided, and that the lawyer will treat the payment as the lawyer's property immediately on receipt and will not deposit the fee into a trust account.

[14] Paragraph (f)(2) describes a "flat fee," sometimes also known as a "fixed fee." A flat fee constitutes complete payment for specified legal services, and does not vary with the amount of time or effort expended by the lawyer to perform or complete the specified services. If the requirements of paragraph (f)(2) are not met, a flat fee received in advance must be deposited initially in the lawyer's trust account. See Washington Comment [12].

[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) (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] In fee arrangements involving more than one type of fee, the requirements of paragraphs (f)(1) and (f)(2) apply only to the parts of the arrangement that are retainers or flat fees. For example, a client might agree to make an advance payment to a lawyer, a portion of which is a flat fee for specified legal services with the remainder to be applied on an hourly basis as services are rendered. The latter portion is an advance fee deposit that must be placed in trust under Rule 1.15A(c)(2). If the requirements of paragraph (f)(2) are met regarding the flat fee portion, those funds are the lawyer's property on receipt and must not be kept in a trust account. If the payment is in one check or negotiable instrument, it must be deposited intact in the trust account, and the flat fee portion belonging to the lawyer must be withdrawn at the earliest reasonable time. See Rule 1.15A(h)(1)(ii) & (h)(4). See also Comment [10] to Rule 1.15A (explaining prohibition on split deposits). Although a signed writing is required under paragraphs (f)(1) and (f)(2) only for the retainer or flat fee portion of the fee (and only if the lawyer and client agree that the fee will be the lawyer's property on receipt), the lawyer should consider putting the entire arrangement in writing to facilitate communication with the client and prevent future misunderstanding. See Washington Comment [11].

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 complies 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 1.7

CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or
2. there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

1. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
2. the representation is not prohibited by law;
3. the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
4. each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).

Comment

General Principles

[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] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c). See also Washington Comment [36].

Identifying Conflicts of Interest: Directly Adverse
[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. See also Washington Comment [37].

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] [Washington revision] When lawyers representing different clients in the same matter or in substantially related matters are related as parent, child, sibling, or spouse, or if the lawyers have some other close familial relationship or if the lawyers are in a personal intimate relationship with one another, there may be a significant risk that client confidences will be revealed and that the lawyer's family or other familial or intimate relationship will interfere with both loyalty and independent professional judgment. See Rule 1.8(f). As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer so related to another lawyer ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from such relationships is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rules 1.8(k) and 1.10.

[12] [Reserved.]
**Interest of Person Paying for a Lawyer's Service**

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

**Prohibited Representations**

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (Competence) and Rule 1.3 (Diligence).

[16] [Washington revision] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states other than Washington limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest. See Washington Comment [38].

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

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests. See also Washington Comment [39].

**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.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] [Reserved.]

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear.
under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them. See also Washington Comment [40].

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16. See also Washington Comment [41].

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a).
Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Additional Washington Comments (36 - 41)

General Principles

[36] Notwithstanding Comment [3], lawyers providing short-term limited legal services to a client under the auspices of a program sponsored by a nonprofit organization or court are not normally required to systematically screen for conflicts of interest before undertaking a representation. See Comment [1] to Rule 6.5. See Rule 1.2(c) for requirements applicable to the provision of limited legal services.

Identifying Conflicts of Interest: Material Limitation

[37] Use of the term "significant risk" in paragraph (a)(2) is not intended to be a substantive change or diminishment in the standard required under former Washington RPC 1.7(b), i.e., that "the representation of the client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests."

Prohibited Representations

[38] In Washington, a governmental client is not prohibited from properly consenting to a representational conflict of interest.

Informed Consent

[39] Paragraph (b)(4) of the Rule differs slightly from the Model Rule in that it expressly requires authorization from the other client before any required disclosure of information relating to that client can be made. Authorization to make a disclosure of information relating to the representation requires the client's informed consent. See Rule 1.6(a).

Nonlitigation Conflicts

[40] Under Washington case law, in estate administration matters the client is the personal representative of the estate.

Special Considerations in Common Representation

[41] Various legal provisions, including constitutional, statutory and common law, may define the duties of government lawyers in representing public officers, employees, and agencies and should be considered in evaluating the nature and propriety of common representation.
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;

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

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

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

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

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

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

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

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

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

(1) the client gives informed consent;

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

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

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

(h) A lawyer shall not:

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

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

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

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

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

(j) A lawyer shall not:

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

(2) have sexual relations with a representative of a current client if the sexual relations would, or would likely, damage or prejudice the client in the representation.
(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 (l) 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 (l) 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. (i) 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:
   a. to bear the cost of providing conflict counsel; or
   b. 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. (ii) 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

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[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 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 lawyer is desirable. See Rule 1.0A(e) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser
and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[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 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.

Use of Information Related to Representation

[5] [Washington revision] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), and 8.1.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).

Financial Assistance

[10] [Washington revision] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. See Washington Comment [21].

Person Paying for a Lawyer's Services
[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitee (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

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

**Limiting Liability and Settling Malpractice Claims**

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

**Acquiring Proprietary Interest in Litigation**

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer
acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] [Washington revision] When the client is an organization, paragraph (j) of this Rule applies to a lawyer for the organization (whether inside or outside counsel). For purposes of this Rule, "representative of a current client" will generally be a constituent of the organization who supervises, directs or regularly consults with that lawyer on the organization's legal matters. See Comment [1] to Rule 1.13 (identifying the constituents of an organizational client). See also Washington Comments [22] and [23].

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

Additional Washington Comments (21-31)

Financial Assistance

[21] Paragraph (e) of Washington's Rule differs from the Model Rule. Paragraph (e) is based on former Washington RPC 1.8(e). The minor structural modifications to the general prohibition on providing financial assistance to a client do not represent a change in Washington law, and paragraph (e) is intended to preserve prior interpretations of the Rule and prior Washington practice.

Client-Lawyer Sexual Relationships

[22] Paragraph (j)(2) of Washington's Rule, which prohibits sexual relationships with a representative of an organizational client, differs from the Model Rule. Comment [19] to Model Rule 1.8 was revised to be consistent with the Washington Rule.

[23] Paragraph (j)(3) of the Rule specifies that the prohibition applies with equal force to any lawyer who assists in the representation of the client, but the prohibition expressly does not apply to other members of a firm who have not assisted in the representation.
Personal Relationships

[24] Model Rule 1.8 does not contain a provision equivalent to paragraph (l) of Washington's Rule. Paragraph (l) prohibits representations based on a lawyer's personal conflict arising from his or her relationship with another lawyer. Paragraph (l) is a revised version of former Washington RPC 1.8(i). See also Comment [11] to Rule 1.7.

Indigent Defense Contracts

[25] Model Rule 1.8 does not contain a provision equivalent to paragraph (m) of Washington's Rule. Paragraph (m) specifies that it is a conflict of interest for a lawyer to enter into or accept compensation under an indigent defense contract that does not provide for the payment of funds, outside of the contract, to compensate conflict counsel for fees and expenses.

[26] Where there is a right to a lawyer in court proceedings, the right extends to those who are financially unable to obtain one. This right is affected in some Washington counties and municipalities through indigent defense contracts, i.e., contracts entered into between lawyers or law firms willing to provide defense services to those financially unable to obtain them and the governmental entities obliged to pay for those services. When a lawyer or law firm providing indigent defense services determines that a disqualifying conflict of interest precludes representation of a particular client, the lawyer or law firm must withdraw and substitute counsel must be obtained for the client. See Rule 1.16. In these circumstances, substitute counsel is typically known as "conflict counsel."

[27] An indigent defense contract by which the contracting lawyer or law firm assumes the obligation to pay conflict counsel from the proceeds of the contract, without further payment from the governmental entity, creates an acute financial disincentive for the lawyer either to investigate or declare the existence of actual or potential conflicts of interest requiring the employment of conflict counsel. For this reason, such contracts involve an inherent conflict between the interests of the client and the personal interests of the lawyer. These dangers warrant a prohibition on making such an agreement or accepting compensation for the delivery of indigent defense services from a lawyer that has done so. See ABA Standards for Criminal Justice, Std. 5-3.3(b)(vii) (3d ed. 1992) (elements of a conflict for defense services should include "a policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses"); People v. Barboza, 29 Cal.3d 375, 173 Cal. Rptr. 458, 627 P.2d 188 (Cal. 1981) (structuring public defense contract so that more money is available for operation of office if fewer outside attorneys are engaged creates "inherent and irreconcilable conflicts of interest").

[28] Similar conflict-of-interest considerations apply when indigent defense contracts require the contracting lawyer or law firm to pay for the costs and expenses of investigation and expert services from the general proceeds of the contract. Paragraph (m)(I)(ii) prohibits agreements that do not provide that such services are to be funded separately from the amounts designated as compensation to the contracting lawyer or law firm.

[29] Because indigent defense contracts involve accepting compensation for legal services from a third-party payer, the lawyer must also conform to the requirements of paragraph (f). See also Comments [11][12].

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 7.1  
COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Comment

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] See also Rule 8.4(e) for the prohibition against stating or implying 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.
RPC 8.3
REPORTING PROFESSIONAL MISCONDUCT

(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 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 the legal profession should be self-regulating. 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 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;

(f) knowingly
   (1) assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
   (2) assist or induce an LLLT in conduct that is a violation of the applicable rules of professional conduct or other law;

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

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, lawyers, or LLLTs, other parties, witnesses, 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. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.

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

(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] [Reserved.]
[3] [Washington revision] Legitimate advocacy respecting the factors set forth in paragraph (h) does not violate paragraphs (d) or (h). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Additional Washington Comment (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].
WSBA Practice of Law Board Resources
Practice of Law Board
Dedicated to educating the public and expanding access to justice

Practice of Law Board

• Educate the public about how to receive competent legal assistance.
• Promote expanded access to affordable and law-related services.
• Expand public confidence in the administration of justice.
• Consider new avenues for people who are not lawyers to provide legal and law-related legal services.
• Issue advisory opinions.
• Receive complaints alleging the unauthorized practice of law and refer them to appropriate authorities.

Gather Input about the Future of the Practice of Law Board

The Washington Supreme Court directed the Practice of Law Board to meet with interested people to discuss the future of the Practice of Law Board and report to the Court. If you are interested in more information, please contact the Board.

Meetings

The Practice of Law Board will meet with the Supreme Court, 1–3 p.m., Tuesday, March 21, 2017. Agenda and meeting materials will be posted on this page. Meetings are open to the public.

Minutes

| Oct. 20 | April 21 |
| Sept. 15 | March 17 |
| Aug. 16 | Feb. 18 |
| July 21 | Jan. 21 |
| June 16 | |
| May 19 | |

Resources for Legal Assistance

Mortgage Modifications for Washington Real Property

- Loan Mortgage Modification Interpretive Statement
- Washington Law Help
- Attorney General Office – Foreclosure & Mortgage Assistance
- Probonowa.org

Immigration

- American Bar Association – Notario Fraud
- American Bar Association – Consumer Education

http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Practice-of-Law-Board
Stop Notario Fraud
Office of the Attorney General – Immigration Services
Office of the Attorney General – Crack Down on Illegal Immigration Assistance
Department of Justice – Recognition & Accreditation Program

Limited License Legal Professionals

Limited License Legal Technician Board
Limited Practice Board

Contact Us

Chair: Hon. Paul Bastine, ret.
Staff Liaison: Julie Shankland
About Notario Fraud

About Notario Fraud

Individuals who represent themselves as qualified to offer legal advice or services concerning immigration or other matters of law, who have no such qualification, routinely victimize members of immigration communities. Such representations can include false statements that

- The individual is an attorney, or abogado;
- The individual is authorized to represent immigrants before the United States Citizenship and Immigration Service ("USCIS"), or before immigration courts;
- The individual is qualified to assist in preparing a will, corporate document or other legal paperwork;
- The individual is a legal assistant;
- The individual has a court license; or
- The individual is a notario publico.

Misrepresentations as to an individual's qualification to offer legal advice can have severe implications for immigrants. In many cases the work performed by such individuals results in missed deadlines, the filing of incorrect or incomplete forms, or the filing of false claims with the government. As a result of the advice or actions of such individuals an immigrant can miss opportunities to obtain legal residency, can be unnecessarily deported, or can be subject to civil and/or criminal liability for the filing of false claims. In addition, immigrants often spend hundreds, thousands, or tens of thousands of dollars in payment for what they believe are the services of a licensed attorney.

The term "notario publico" is particularly problematic in that it creates a unique opportunity for deception. The literal translation of "notario publico" is "notary public." While a notary public in the United States is authorized only to witness the signature of forms, a notary public in many Latin American (and European) countries refers to an individual who has received the equivalent of a law license and who is authorized to represent others before the government.

The problem arises when individuals obtain a notary public license in the United States, and use that license to substantiate representations that they are a "notario publico" to immigrant populations that ascribe a vastly different meaning to the term.

Example of Notario Advertising

http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud/about_notario_fraud.html
Consumer Education

Consumer Education Materials

- Immigration Consultant Fraud: Basic Information & What You Can Do If You Are a Victim of Fraud
  A six-page overview of notario fraud, including an explanation of the reasons immigrants fall prey to notario fraud, ways in which immigrants can protect themselves from such fraud, and a list of possible actions victims can take.

- Protect Yourself from Immigration Consultant Fraud
  A two-page document highlighting the precautions immigrants are ought to take to protect themselves from notario fraud.

- Using an Immigration Assistance Service Provider: Tips for Consumers
  NYC Department of Consumer Affairs, 2010.
  A list of suggestions for consumers considering retaining the help of an Immigration Assistance Service Provider (ISP). This document is available in six languages. In addition, the document includes an explanation in English and Spanish of the difference between Notario Publico and notary public in the U.S.

- Who Can Help with Immigration Matters? Information to Protect Yourself from Immigration Fraud
  A three-page Q & A on how to avoid becoming a victim of immigration fraud.

- Guidelines for Consumers: How and Where to File Complaints Against Notaries and Immigration Consultants
  American Immigration Lawyers Association (AILA), 2010.
  A guide for consumers on how to file complaints against fraudulent notaries in each state.

- PSA on Comprehensive Immigration Reform and Notarios
  American Immigration Lawyers Association (AILA), updated 2013.
  AILA InfoNet Doc. No. 13041661 (posted Apr. 29, 2013)
  Public Service Announcements for you to share with your community.

- Combating Immigration Provider Fraud: A Training Guide
  Immigrant Legal Resource Center (ILRC).
  A training guide to educate your clients and your community members about fraudulent immigration service providers and unscrupulous lawyers; incorporate consumer fraud education into presentations about immigration; and spread the word in the immigrant community about common immigration fraud schemes.

Reaching Victims of Notario Fraud Free Webinar

For more information or to watch the webinar, please click here.

Contributing Additional Materials

To contribute resources for the site, please contact Tanisha Bowens-McCatty, Commissioner Associate Director.
Additional Resources

For more information on notario fraud from other organizations, please visit the following websites:

- Avoid Scams: The Unauthorized Practice of Immigration Law Initiative
  U.S. Citizenship and Immigration Services (USCIS)

- Avoiding Scams Against Immigrants
  Federal Trade Commission (FTC)

- Stop Notario Fraud [Español]
  American Immigration Lawyers Association

- Immigration Fraud Awareness
  Immigration Legal Resource Center (ILRC)

- Notario and Immigration Consultant Fraud Resources
  Catholic Legal Immigration Network, Inc. (CLINIC)

Are you a Victim?

If you or someone you know is a victim of notario fraud, please go to Resources for Victims of Notario Fraud.
Immigration law is one of the most complicated areas in the legal field. Thousands of Washington consumers require immigration-related legal services each year, but unfortunately many individuals, often times relying on referrals from family and friends, are unknowingly defrauded by people claiming to be experts. The consequences can be devastating for those seeking the opportunity to live and work in the United States.

Missing a deadline or not properly researching applicable law prior to submitting an application can cause an immigrant to lose their legal status or even face deportation.

**Locating Legitimate Services**

To find a licensed attorney or federally authorized professional who specializes in immigration law, contact these organizations for information:

- American Association of Immigration Lawyers -Washington Chapter: [www.ailawa.org](http://www.ailawa.org/)
- You may also search for an immigration attorney, by city and state, at AILA’s immigration lawyer search page: [www.ailalawyer.com](http://www.ailalawyer.com/)
- Latino Bar Association of Washington (LBAW): [www.lbaw.org](http://www.lbaw.org/)
- Washington State Bar Association: [www.wsba.org](http://www.wsba.org/)
- The Northwest Immigrant Rights Project provides legal services to immigrants and refugees and offers workshops for those who want to know if they are qualified to petition for their family members to get legal status in the U.S. Information is available online at [www nwirp.org](http://www.nwirp.org/). Western Washington residents may call 800-445-5771 or 206-587-4009. In Eastern or Central Washington, call 888-756-3641. Calls are answered on weekdays; ask for the Citizenship Unit.
- Your county bar association

**Only licensed attorneys and federally authorized practitioners can provide legal advice on immigration matters.**

- Locating Legitimate Services
- Checking Credentials
- Reporting Fraud
- Washington State Law
- Additional Resources
- Notario Warning

Immigration Services brochure

Western Washington residents may call 800-445-5771 or 206-587-4009. In Eastern or Central Washington, call 888-756-3641. Calls are answered on weekdays; ask for the Citizenship Unit.

- **Your county bar association**
The Wrong Help Can Hurt: Beware of Immigration Scams

Checking Credentials

Make sure anyone who submits an immigration petition on your behalf is authorized to provide immigration-related services before you pay any money or turn over personal information.

- If a person claims to be a lawyer, ask to see his or her bar license. A real lawyer would not be offended by this request.
- Conduct a “lawyer search” on the Washington State Bar Association’s website at www.wsba.org (http://www.wsba.org/) to see if a person is licensed to practice law in Washington.
- If a person is licensed to practice law in another state, make sure to check that state’s registry of licensed attorneys.
- To check if a person or organization is authorized under federal law to provide immigration services, search www.justice.gov/eoir/ra/raroster.htm (http://www.justice.gov/eoir/ra/raroster.htm).

Do not trust other so-called “immigration assistants,” “immigration consultants” or notaries with legal matters. Such individuals may claim to be intimately familiar with immigration law, but they are not authorized to provide legal advice or assist others in preparing documents related to an immigration matter. And they haven’t received any sort of specialized training to prepare them to advise others in immigration cases.

While these individuals may claim to be a less-expensive alternative to a lawyer, having an unskilled practitioner prepare your immigration forms or advise you on the complicated aspects of immigration can cost you dearly in the end. You may have to hire a lawyer later to undo the mess the “immigration assistant” caused in the first place.

Reporting Fraud


The Washington Attorney General’s Consumer Resource Center accepts complaints about immigration scams and the unauthorized practice of law. Victims may file a complaint online at www.atg.wa.gov (http://www.atg.wa.gov/) or call 1-800-551-4635 between 10 a.m. and 3 p.m. weekdays. Written complaints can be filed in Spanish at www.atg.wa.gov/en-espanol (/en-espanol).

State Law

Washington state law protects consumers from immigration-related fraud. The Immigration Services Fraud Prevention Act prohibits anyone from engaging in the unauthorized practice of law in an immigration matter, unless that person is a licensed attorney or is otherwise authorized to provide legal services under federal immigration law.

The law, which is designed to protect consumers from the deceptive business practices, prohibits non-lawyers and unauthorized individuals from engaging in several other activities, such as:

- Selecting or assisting another in selecting an immigration-related government form;
- Advising another as to his or her answers on an immigration-related government form;
- Soliciting to prepare documents for another for submission in a judicial or administrative immigration proceeding;
- Charging a fee for referring another to a person licensed to practice law;
- Drafting or completing legal documents affecting the rights of another in an immigration matter;
- Referring to oneself as an “immigration assistant,” “immigration consultant,” “immigration specialist,” or any other term in any language (including the Spanish term notario público), that conveys or implies that the person possesses professional legal skills in the area of immigration law.

While the law does not prohibit the provision of translation services, the law does prohibit non-lawyers and other unauthorized persons from advising customers as to their answers on immigration forms.
Additional Resources

- Federal Trade Commission education materials in English, Spanish, Chinese, Korean, Creole, Vietnamese and Arabic explain how to avoid and report immigration services fraud, and how to find legitimate no-cost or low-cost immigration advice from authorized providers. Visit www.ftc.gov/immigration (http://www.ftc.gov/immigration) for more information.
- Free information for immigrants and refugees can be found online at www.washingtonlawhelp.org (http://www.washingtonlawhelp.org/).

Don't be Deceived by a Notario Público!

In Washington and around the country, people advertising immigration services use the title notorio público on business cards and in their business dealings to deceive consumers into thinking that they have special legal training in immigration affairs. However, a notario público is not a lawyer and is not authorized under state or federal law to provide you with legal assistance in your immigration case.

In several Latin American countries, the term notario público refers to an individual who is an attorney and has received extensive legal training over the course of several years.

In the United States, a "notary public" is an individual who has the authority to administer an oath or affirmation or witness the signing of papers. The title is relatively simple to obtain.

Many people use this linguistic accident to deceive Spanish-speaking customers into thinking that they are experts in immigration law. Don't be deceived by a person described as a notario or notario público. He or she is probably just a "notary public" with no legal skills whatsoever.

For more information about notarios and their illegal tactics, including information on how to spot a fraudulent immigration services provider, visit the American Immigration Lawyers Association's website at www.stopnotariofraud.com (http://www.stopnotariofraud.com/).

Have a Consumer Issue?

You can file a consumer complaint with our office online or through the mail.

FILE A COMPLAINT (file-complaint)

Consumer Issues A-Z

Acting & Modeling Scams (/acting-modeling-scams)
Antitrust/Unfair Trade Practices (/antitrust-unfair-trade-practices)
Cancellation Rights (/cancellation-rights)
Cars (/cars-0)
Charities (/CHARITIES)
Check Scams (/fake-check-scams)
Contractors (/contractors)
Credit & Debt (/credit-debt)
Dealing with Death (/dealing-death)
Disputes (/disputes)
Foreclosure & Mortgage Assistance (/foreclosure-and-mortgage-assistance)
Gas Prices (/gas-prices)
Health Clubs (/health-clubs)
Identity Theft & Privacy (/GUARDIT.aspx)
Immigration Services (/immigration-services)
Junk Mail (/junk-mail)
Landlord-Tenant (/Landlord-Tenant)
Online Auctions (/auctions)
Out of Business (/when-store-goes-out-business)
Prescription Drug Prices (/prescription-drug-prices)
Public Records (/request-ago-public-records)
Pyramid Schemes (/PYRAMID-SCHEMES)
Refunds and Exchanges (/store-refunds-exchanges)
Senior Fraud (/senior-fraud)
AILA PUBLIC SERVICE ANNOUNCEMENT HIGHLIGHTS HOW YOU CAN PROTECT YOURSELF BY UNDERSTANDING YOUR RIGHTS AND LEARNING THE TRUTH

Stop Notario Fraud!

Don’t become a victim of dishonest immigration consultants often known as “notarios.” Immigration consultants, notaries public, and notarios cannot represent you in the immigration process. These people—especially notarios—prey on immigrants, often from the same ethnic community as the notarios themselves.

NOTARIOS WILL TAKE YOUR MONEY AND YOUR DREAMS!

Many noncitizens find out that they will never get their green card or other immigration benefits because an unqualified immigration consultant or notario unlawfully working as an immigration lawyer destroyed their dreams.

PROTECT YOUR FAMILY’S DREAMS

To avoid fraud, use your common sense. Many people hear what they want to hear—be smart! If it sounds too good to be true, it probably is. Don’t believe it if someone tells you about a secret new immigration law or claims to have connections or special influence with any government office or agency. Follow these simple guidelines.

TAKE ACTION TO GET HELP AND STOP THE NOTARIO FROM HARMING OTHERS!

http://www.stopnotariofraud.org/
If you have been harmed by a notario or an immigration consultant, you can take action that may help you and stop the person from harming others.

WE WANT TO HELP!

The resources on this website are meant to:

- Help immigrants find competent and affordable legal service providers
- Help prevent immigrants from being victimized by notaries
- Provide resources for victims of notaries
- Provide information and resources for attorneys working with victims to remedy crimes committed by fraudulent consultants unlawfully practicing immigration law.

This website is a public service of the American Immigration Lawyers Association.
Este sitio web es un servicio público de la Asociación de Abogados de Inmigración Americana.

http://www.stopnotariofraud.org/
RECOGNITION & ACCREDITATION (R&A) PROGRAM

Please scroll down for additional information regarding the Recognition and Accreditation Program.

Accredited representatives may assist aliens in immigration proceedings before the Department of Homeland Security (DHS), or the Executive Office for Immigration Review’s (EOIR) immigration courts and the Board of Immigration Appeals (BIA), or both. All accredited representatives must be affiliated with an organization that is recognized. Organizations must apply for recognition as well as accreditation of their representatives. The rules for recognized organizations and accredited representatives, including the qualifications and application process, are currently found in the Code of Federal Regulations, 8 C.F.R. § 1292.1 – 1292.20

Note: Executive Office for Immigration Review Announces Final Rule on the Recognition of Organizations and Accreditation of Non-Attorney Representatives


The new rule went into effect on January 18, 2017, and it transferred authority for adjudication of R&A applications from the BIA to the Office of Legal Access Programs.

Applications Pending on January 18, 2017

The new rule impacts applications pending at the time of transition that have not yet been decided by the BIA, as well as governs future applications. Applications pending at the time of the rule’s effective date were transferred to the Office of Legal Access Programs for resolution, and if necessary, will be returned to applicants for further documentation or information in order to allow their proper adjudication under the new rule.

The regulation and the FAQs listed below describe the eligibility criteria and application process under the new rule.

Notice on Re-application for Currently Recognized Organizations

Currently recognized organizations should take note that they must apply under the standards of the new rule, on or before one, two or three years from the effective date, depending on the particular organization’s circumstances:

Recognized organizations lacking an accredited representative on the effective date (i.e. January 18, 2017) of this regulation must apply under the new rule within one year of the effective date (i.e. January 18, 2018);

Organizations that have been recognized for more than 10 years as of the effective date will need to apply under the new rule within two years of the effective date (i.e. January 18, 2019);

Organizations that have been recognized for less than 10 years as of the effective date will need to apply under the new rule within three years of the effective date (i.e. January 18, 2020)

Note: Once currently recognized organizations have re-applied successfully under the new rule, they will be recognized for a six year period, after which renewal will be required on or before the expiration of the six year period.

Accreditation of representatives in recognized organizations is valid for three years, and organizations must re-apply for their representative’s accreditation on or before the expiration date of accreditation. Currently accredited representatives must apply for renewal on or before expiration of the three year accreditation period.

The schedule for renewal of recognition and accreditation does not run concurrently. Rather, it depends when the expiration of each occurs.

This web page provides information on the R&A Program. Below you will find links to the regulation, Frequently Asked Questions, the rosters of recognized organizations and accredited representatives, the required Form EOIR-31 for recognition of organizations, the required Form EOIR-31A for accreditation of an organization’s representatives, and the address for the R&A Program.

The R&A rosters provided on this page are maintained by the R&A Program. The rosters state whether an accredited representative may assist aliens in all proceedings (full accreditation) or only before DHS (partial accreditation).

EOIR has established a mandatory electronic registry, known as eRegistry, for attorneys and fully accredited representatives. All fully accredited representatives who wish to practice before the immigration courts and the BIA must complete the eRegistry process to appear before EOIR. Details on eRegistry are available at www.justice.gov/eoir/engage/eRegistration.htm.
R&A Links:


Press Release (PDF)

Stakeholder Webinar on Rule Changes (PDF)

Frequently Asked Questions (FAQs) (PDF)

Recognition and Accreditation Rosters

Form EOIR-31 (effective January 18, 2017) (PDF)

Form EOIR-31A (effective January 18, 2017) (PDF)

Email the R&A Program at R-A-Info@usdoj.gov

Mail:  R&A Coordinator
       Executive Office for Immigration Review
       Office of Legal Access Programs
       5107 Leesburg Pike Suite 1900
       Falls Church, Va. 22041

(Please note that some items above are linked to a document in PDF format. In order to view PDF documents, please download the free version of Adobe Acrobat Reader - Free Adobe Acrobat Reader. If you already have the free Adobe Acrobat Reader and experience difficulties viewing EOIR's documents, you may need to download a more current version.)

Please read our Privacy and Security Notice

Updated February 27, 2017
WSBA Discipline Notices
Discipline Notice - Antonio Salazar

WSBA Bar#: 6273  Member Name: Antonio Salazar
Action: Disbarment  Effective Date: 05/12/2010
RPC: 1.1 - Competence  1.3 - Diligence  1.4 - Communication  1.5 - Fees  1.7 - Conflict of Interest; General Rule  1.8 - (prior to 9/1/2006) Conflict of Interest; Prohibited Transactions; Current Client  1.9 - (prior to 9/1/2006) Conflict of Interest; Former Client  3.3 - Candor Toward the Tribunal  5.1 - Responsibilities of a Partner or Supervisory Lawyer  8.4(i) - Conduct Demonstrating Unfitness to Practice Law  1.16 - Declining or Terminating Representation

Description:
Antonio Salazar (WSBA No. 6273, admitted 1975), of Seattle, was disbarred, effective May 12, 2010, by order of the Washington State Supreme Court following a hearing. This discipline resulted from conduct involving lack of competence, diligence, and communication; failure to disclose conflicts of interest; failure to obtain consent waivers; failure to properly supervise another lawyer; charging unreasonable fees; failure to provide accounting of fees; failure to refund unearned fees; and fitness to practice law.

Matter No. 1: In 1998, Mr. Salazar represented clients G, D, and H, all employees or shareholders of a taxicab company, in a felony assault case. On December 28, 1999, Clients D and G were involved in a shooting that killed a fellow cab driver. Client D was charged with first-degree murder in January 2000 and a lawyer was hired to represent him. Client G put his house up as a bail bond for Client D.

In March 2000, the family of the victim filed a wrongful-death lawsuit against various taxicab company employees, including Clients D, H, G, and C. The lawsuit alleged a conspiracy to kill the victim, which gave the defendants a motive to blame Client D for the victim’s death. Prior to the start of the murder trial, Mr. Salazar took on representation of Clients H and C in the wrongful death suit. In July 2000, Mr. Salazar began to represent Client C’s faction in a shareholder lawsuit concerning governance of the taxicab company; the opposing parties in the lawsuit were the victim’s faction within the company. Around September 2000, Client D’s lawyer learned that Client G planned to change his story and testify for the prosecution. Since the lawyer had taken written statements from the witnesses, including Client G, he determined that he would be an important impeachment witness and withdrew from representation of Client D. Client G withdrew the pledge of his home on Client D’s bail bond and Client D was returned to jail. Client C then hired Mr. Salazar to represent Client D and paid Mr. Salazar a flat fee of $22,000 from a defense fund he raised from his faction. Mr. Salazar had no fee agreement with Client D.

When Mr. Salazar took over the case, he knew that Client G had changed sides and had withdrawn the pledge of his home. By the time of the trial, Client G was a former client of Mr. Salazar’s, a defendant in the wrongful-death suit in which Mr. Salazar represented other defendants, a partial source of fees paid to Mr. Salazar, and a key witness for the prosecution. Mr. Salazar also had conflicts of interest involving Client C, who served as a significant source of business for him. Mr. Salazar was defending Client C in the wrongful-death lawsuit and the shareholder lawsuit while he continued to represent Client D in the murder trial. Client C was a central figure in these lawsuits and the disputes that gave rise to the shooting. In addition, several of the state’s witnesses numbered among Mr. Salazar’s clients in the shareholder suit. The discussions Mr. Salazar had with Client D about his prior representation of Client G were cursory. He did not provide details that Client D needed to determine whether to waive conflict, such as Client G’s goal to blame Client D as the sole killer of the victim in the wrongful death suit. Mr. Salazar never obtained a written conflict of interest waiver from Client D.

When the prosecutor raised the issue of potential conflicts to the trial judge, Mr. Salazar acknowledged representation of Client C and others on the state’s witness list but stated the matters were “totally unrelated” and that his client knew all about it. Mr. Salazar did not disclose his previous representation of Client G to the court.

Despite Client D’s testimony at trial that Client C was with him when the gun used to shoot the victim was purchased, and that Client G gave him the bullets, Mr. Salazar drafted a motion for summary judgment in the wrongful death suit asserting Client D was convicted of killing the victim and his clients in the suit had nothing to do with it.

Matter No. 2: Client L, a resident of Canada, contacted Mr. Salazar by letter dated March 15, 2006, to seek help on behalf of her husband who had been deported from the United States in 2003. After his deportation, a warrant was issued for his arrest because of an underlying theft charge. Client L explained it was impossible for her husband to come to the United States to clear the charge and asked Mr. Salazar’s assistance to get the warrant and the charge removed. Client L wanted to clean up her husband’s FBI background check so that he could emigrate to Canada.

Mr. Salazar took no action on the matter until October 2006, when he prepared a motion to quash the warrant, which was not filed. Instead, Mr. Salazar and his associate attempted to remove the theft charge against the husband by getting the victim to agree to accept restitution and the prosecutor to agree not to prosecute. The strategy proved unsuccessful since the prosecutor would not agree to anything unless the husband presented himself for a plea to a lesser charge, which he did not do because of his immigration status. On June 25, 2007, Client L hired a new attorney who filed a successful motion to quash the warrant. At the outset of representation, Client L paid Mr. Salazar $3,000. She requested an accounting of the fees and a refund from Mr. Salazar, neither of which he provided.

Matter No. 3: On August 7, 2006, Mr. Salazar’s firm was retained by Client M, a permanent resident of the United States, to help keep his wife and children, who were non-U.S. residents, in the United States. In 2006, the family had received an order to voluntarily leave the United States. An associate of Mr. Salazar’s firm met with the family and they signed a legal service agreement stating the firm would represent them in a “BIA appeal and motion to adjust status.” The family paid Mr. Salazar’s firm $3,000. The associate set up the file as an appeals file. The legal service agreement was held by the bookkeeper and not kept with the client file. Shortly afterwards, the associate left the firm. Mr. Salazar never saw the agreement and, without talking to the family, he considered only an appeal of the Cancellation of Removal and not the Adjustment of Status. The associate later sent Mr. Salazar an e-mail about the client’s case, explicitly stating that a motion to remand the matter for Adjustment of Status should be brought. By the time the associate sent the e-mail, Mr. Salazar had sued him for misappropriation of funds, and either did not receive, or read and retain, the e-mail. Without the e-mail or legal service agreement, Mr. Salazar had insufficient information to determine the best course of action to pursue on behalf of the client.

On March 15, 2007, Mr. Salazar filed an appeal of the order denying Cancellation of Removal and on August 6, 2007, the appeal was dismissed. Mr. Salazar received the dismissal on August 9, 2007, and did not forward it to the family until August 2007.
24, approximately 15 days later. An appeal of the dismissal was due on September 6, 2007. The family was given 60 days to voluntarily depart the United States. In October 2007, the family hired new counsel, who obtained the Adjustment of Status on their behalf. Had Mr. Salazar communicated with the client, he would have known that an adjustment of status, which is a "straightforward" process, was all that the family needed.

Matter No. 4: In October 2006, Client A hired Mr. Salazar to represent him in a LIFE Act Application (for status as a lawful resident of the United States). Client A submitted the application before hiring Mr. Salazar, and the application falsely stated he had never been convicted of a crime. Client A wanted Mr. Salazar to represent him in the scheduled interview and paid Mr. Salazar $500.

Instead of accompanying Client A to the interview with the immigration official, Mr. Salazar sent an inexperienced associate with no immigration experience. The associate was instructed by Mr. Salazar to take notes on what occurred, specifically on what additional information Client A would be required to provide. On September 24, 2007, Mr. Salazar received a Notice of Intent to Deny (LIFE Act application). The notice, dated September 24, 2007, gave the client 30 days to provide additional evidence in support of his application. Mr. Salazar sent the notice to his client on October 29, 2007, after the expiration of the 30-day deadline.

Matter No. 5: In October 2007, Client O hired Mr. Salazar to represent him in removal hearings before the U.S. Immigration Court. At a court hearing Mr. Salazar attended, the court set a deadline of December 1, 2007, to file an EOIR-42, Cancellation of Removal application. Mr. Salazar failed to calendar or meet the deadline. Client O repeatedly inquired about the status of his case and Mr. Salazar told him not to worry. By December 13, 2007, Mr. Salazar still had not filed the application, and the Immigration Court had vacated the deadline. Mr. Salazar did not inform Client O about the order. In February 2008, Client O learned of the order from a friend and called Mr. Salazar. At the time Client O called, there was still time for Mr. Salazar to file a motion to re-open. Mr. Salazar assured the client that he would do so, but failed to follow through, and by the time Client O retained new counsel, the deadline had passed.

Matter No. 6: In April 2006, Client K hired Mr. Salazar to represent him before the Board of Immigration Appeals (BIA), where he was appealing the Immigration Court's decision to deport him based on a felony conviction. In December 2007, the BIA dismissed the appeal and upheld the court's decision. Mr. Salazar and Client K negotiated an additional fee of $1,500 plus $500 in filing fees for the filing of an appeal to the 9th Circuit; however, in January 2008, Mr. Salazar accepted and gave Client K a written receipt for $1,000 in fees and $500 in filing fees for "Payment in full for 9th Circuit Petition." Mr. Salazar did not file the 9th Circuit appeal nor did he inform Client K that he would not file the appeal, a part of which had been a request for a stay of execution of the Deportation Order. On March 18, 2008, Client K was arrested at his home in front of his distraught wife and children and spent 35 days in detention before being deported to Canada. Had Mr. Salazar sought a stay of the Deportation Order, the client and his family would have had time to prepare for an orderly departure to Canada. Client K was unable to obtain a refund of the money he paid to Mr. Salazar until they hired a lawyer to demand it.

Matter No. 7: Prior to the foregoing matters, Mr. Salazar had been disciplined for misconduct on seven separate occasions. In July 1990, he was censured for failing to advise a client over a period of three years that he would not take further action on an application until the client provided certain documentation, and failure to file an application on behalf of another client, despite the client’s repeated inquiries. In September 1994, Mr. Salazar was admonished for failure to file a criminal defense and file a defendant’s new counsel, the deadline had passed.

Mr. Salazar's conduct violated former RPC 1.1 and current RPC 1.1, requiring a lawyer to provide competent representation to a client; former RPC 3.1 and current RPC 3.1, requiring a lawyer to act in the interest of a client; former RPC 2.18 and current RPC 2.18, requiring a lawyer to maintain client confidentiality; and former RPC 8.4(n) and current RPC 8.4(n), prohibiting a lawyer from committing a violation of the RPC. The misconduct violated RPC 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating an unfitness to practice law.

Christine Gray and Erica Temple represented the Bar Association at the hearing. Joanne S. Abelson represented the Bar Association on appeal. Mr. Salazar represented himself. Kimberly A. Boyce was the hearing officer.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.

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Discipline Notice - Antonio Salazar

WSBA Bar#: 6273  
Member Name: Antonio Salazar  
Action: Suspension  
Effective Date: 07/07/2010

RPC:  
1.3 - Diligence  
1.5 - Fees  
8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation  
8.4 (n) - Conduct Demonstrating Unfitness to Practice Law

Discipline Notice:

Description: Antonio Salazar (WSBA No. 6273, admitted 1975), of Seattle, was suspended for one year, effective July 7, 2010, by order of the Washington State Supreme Court following a default hearing. Note: This order does not contradict or modify the order which disbarred Mr. Salazar from the practice of law, effective May 12, 2010. This discipline is based on conduct involving failure to act diligently, dishonest conduct, and a pattern of neglect demonstrating unfitness to practice law.

Matter No. 1: In March 2007, Mr. Salazar was retained to represent clients in a dispute regarding the sale of their truck and trailer. In April 2007, Mr. Salazar filed a Complaint for Damages in superior court on behalf of the clients. In June 2007, the opposing party filed for bankruptcy. Mr. Salazar advised his clients that, because of the pending bankruptcy action, they could not proceed with their lawsuit. The case was dismissed on August 16, 2007.

On August 24, 2007, Mr. Salazar’s office received notice that the opposing party’s bankruptcy had been dismissed. Mr. Salazar told the clients it would cost $500 to reopen the civil suit, and received two checks from the clients totaling $500 for filing fees to re-open their civil suit. Mr. Salazar’s office cashed both checks and recorded one in the client ledger. The other check was copied to the clients’ file, but was not entered in the register. Mr. Salazar took no action to reopen the suit and did not return the $500 to the clients. He ultimately told the clients that he would not work on their case, and sent them their file in June 2008. In a letter to the Association dated March 20, 2009, Mr. Salazar falsely stated that he “never agreed to reopen the case” and if the clients had sent his office checks to refile an action, then the checks would have been returned to the clients.

Pattern of Neglect: In July 1990, Mr. Salazar stipulated to censure for failing to complete a client’s alien employment labor certification application over a period of three years and for failing to file an extension of another client’s resident visa. In September 1994, a review committee of the Disciplinary Board admonished Mr. Salazar for failing to file a criminal defendant’s appeal brief, process his appeal, notify the client that he was no longer working on his appeal. In February 1995, a hearing officer recommended that Mr. Salazar be admonished for failing to cooperate in eight separate disciplinary Investigations. In December 1999, a review committee of the Disciplinary Board admonished Mr. Salazar for failing to ensure that his staff properly calendared an appeal date for a client in a BIA (Board of Immigration Appeals) appeal. In September 2001, a hearing officer recommended that Mr. Salazar be censured for failing to timely file a client’s appeal brief to the BIA. In February 2005, the Supreme Court suspended Mr. Salazar for failing to expedite his clients’ visa application, failing to respond to clients’ requests for information, failing to provide a client with an Immigration and Naturalization Services Request for Evidence letter in a timely fashion, failing to communicate to his client, failing to account to a client regarding his fees, and failing to respond promptly to the Association’s requests for responses regarding four separate grievances. In March 2008, a hearing officer recommended that Mr. Salazar be reprimanded for misrepresenting to opposing counsel that Mr. Salazar’s client had accepted a settlement offer when in fact he had not obtained his client’s agreement. On October 30, 2009, a hearing officer recommended that Mr. Salazar be disbarred. The hearing officer concluded that Mr. Salazar had engaged in a pattern of neglect with respect to client matters and caused serious injury, or potential serious injury, to more than one client. Mr. Salazar was subsequently disbarred effective May 12, 2010.

Mr. Salazar’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.5(a), prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses; 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law.

Erica Temple represented the Bar Association. Mr. Salazar represented himself. Carl J. Carlson was the hearing officer.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.
Discipline Notice - Theodore A. Mahr

WSBA Bar#: 19555  
Member Name: Theodore A. Mahr

Action: Suspension  
Effective Date: 11/10/2009

RPC:  
1.2 - Scope of Representation  
1.3 - Diligence  
1.4 - Communication  
1.5 - Fees  
8.4 (a) - Violate the RPCs  
8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation  
1.16 - Declining or Terminating Representation

Discipline Notice:

Description: Theodore A. Mahr (WSBA No. 18555, admitted 1990), of Moses Lake, was suspended for three years, effective November 10, 2009, by order of the Washington State Supreme Court following approval of a stipulation. The suspension is to be followed by one year’s probation upon reinstatement. This discipline is based on conduct in 19 different immigration matters involving lack of diligent representation, failure to communicate, charging unreasonable fees, failure to protect clients’ interests, violating the Rules of Professional Conduct, and dishonest conduct.

Mr. Mahr stipulated to engaging in the following conduct, between approximately May 2005 and May 2009, in one or more of the immigration matters:

- Failed to diligently represent clients.
- Failed to keep clients informed about the status of their matters, failed to respond to their inquiries, and failed to provide documentation to his clients and their families.
- Prepared and filed motions for voluntary departure, change of venue, and withdrawal as counsel without notice to, consultation with, and approval of clients.
- Failed to explain the scope of his representation and basis and factors involved in determining his charges to clients.
- Attempted to charge, and charged, clients or their families additional fees after they already paid a flat fee.
- Misrepresented to clients and their families that he would obtain the clients’ release from detention when, in fact, he did not, and misrepresented to one client and her husband the status of the client’s matter.
- After being terminated by clients for providing services of little or no value, failed to refund the unearned portion of the clients’ fees and failed to return clients’ files.

Mr. Mahr’s conduct violated RPC 1.2, requiring a lawyer to abide by a client’s decisions concerning the objectives of representation and to consult with the client as to the means by which they are to be pursued; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client’s informed consent is required by the Rules, reasonably consult with the client about the means by which the client’s objectives are to be accomplished, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for information; RPC 1.5(a), prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses; RPC 1.5(b), requiring that the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation except when the lawyer will charge a regularly represented client on the same basis or rate; RPC 1.16(d), requiring a lawyer, upon termination of representation, to 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 other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred; RPC 8.4(a), prohibiting a lawyer from violating or attempting to violate the Rules of Professional Conduct; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Kathleen A. T. Dassel represented the Bar Association. Mr. Mahr represented himself.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.
Discipline Notice - Theodore A. Mahr

WSBA Bar#: 19555
Action: Disbarment
RPC: 1.3 - Diligence
1.4 - Communication
1.5 - Fees
3.3 - Candor Toward the Tribunal
8.4 (b) - Criminal Act
8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation
8.4 (l) - Violate ELCs
1.16 - Declining or Terminating Representation

Description:

Theodore A. Mahr (WSBA No. 19555, admitted 1990), of Moses Lake, was disbarred, effective December 27, 2010, by order of the Washington State Supreme Court following a default hearing. This discipline is based on conduct involving failure to act with reasonable diligence, failure to communicate, charging unreasonable fees, failure to protect clients' interests, false statements to a tribunal, conversion of clients' funds, dishonesty, and noncooperation during the investigation of a disciplinary matter.

Between May 2006 and January 2010, Mr. Mahr was hired by clients to represent them in fourteen different immigration matters. Mr. Mahr charged these clients flat fees and, in many of the matters, either did not diligently pursue the work required or did not complete or even start the outlined legal work. Mr. Mahr's lack of diligence often resulted in delays in the clients' cases.

Mahr's conduct in these matters included:

- Failing to appear at scheduled hearings, file applications and, in one matter, file an appeal;
- Failing to adequately communicate with clients about their cases or the basis for the fee he was charging them and, in some cases, making misrepresentations to clients in order to receive additional funds;
- Making misrepresentations about his fee to a small claims court after being sued by clients;
- Forging a client's signature on a petition;
- Withdrawing from representation of clients without explanation and then failing to return clients' repeated phone calls or refund their unearned fees;
- Failing to inform clients, opposing counsel, or the court about his three-year suspension, effective November 10, 2009, and continuing to accept fees from clients following the effective date of the suspension;

The Office of Disciplinary Counsel (ODC) sent certified letters regarding each grievance to Mr. Mahr, seeking his response and requesting clients' files and other information. Mr. Mahr did not claim the letters and never responded to the requests.

Mr. Mahr's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client's informed consent is required, reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses; RPC 1.5(b), requiring the lawyer to communicate to the client, preferably in writing, before or within a reasonable time after commencing the representation the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible; RPC 1.16(d), requiring the lawyer, upon termination of representation, to 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 other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred; RPC 3.3(a), prohibiting a lawyer from knowingly making a false statement of fact or law previously made to the tribunal by the lawyer; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness orfitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Linda B. Eide represented the Bar Association. Mr. Mahr did not appear either in person or through counsel. Lawrence R. Mills was the hearing officer.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8297.
Discipline Notice - Barbara Wanda Maria Tomaszewski

WSBA Bar#: 12430 Member Name: Barbara Wanda Maria Tomaszewski

Action: Disbarment Effective Date: 06/24/1998

RPC:
- 1.14 - (prior to 9/1/2006) Preserving identity of Funds and Property of a Client
- 8.4 (b) - Criminal Act
- 8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation
- 8.4 (i) - Moral Turpitude

Discipline Notice:

Description: Barbara Tomaszewski (WSBA No. 12430, admitted 1982), of Seattle, has been disbarred by order of the Supreme Court effective June 24, 1998. The discipline follows a default hearing and is based upon her conversion of funds due her employer.

Ms. Tomaszewski was an immigration law associate in a small law firm. Between October 1993 and April 1995, she retained for herself approximately $20,000 in funds paid to her by 17 of the firm’s clients, and deposited those funds in her personal bank account. She did not claim the payments from the clients on her 1993 and 1994 income tax returns. In one instance, she commingled client funds with her own by depositing into her personal account client funds earmarked for a bond required by the Immigration and Naturalization Service.

Ms. Tomaszewski’s conduct violated RPC 8.4(b), which prohibits a lawyer from engaging in criminal acts; RPC 8.4(c), which prohibits a lawyer from engaging in acts involving dishonesty, fraud, deceit or misrepresentation; RPC 1.14, which prohibits commingling of funds; and/or RCL 1.1(a), which prohibits a lawyer from committing acts which involve moral turpitude or which reflect disregard for the rule of law.

The Hearing Officer was Nancy Preg of Seattle. Respondent did not appear. Disciplinary Counsel Joanne S. Abelson represented the Bar Association.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.
Discipline Notice - Sharon Bartu

WSBA Bar#: 17080  
Member Name: Sharon Bartu

Action:  Disbarment  
Effective Date: 03/13/2002

RPC:  
1.1 - Competence  
1.3 - Diligence  
1.5 - Fees  
1.7 - Conflict of Interest; General Rule

Discipline Notice:

Description:  Sharon Bartu (WSBA No. 17080, admitted 1987), of Vancouver, was disbarred by order of the Supreme Court effective March 13, 2002, following a default hearing. This discipline is based on her failing to diligently and competently represent two clients, charging unreasonable fees, and making misleading statements about her services in 1998.

Matter 1: In 1998, Ms. Bartu agreed to represent a husband and wife (Mr. and Mrs. J) and the husband's brother (FJ) in becoming residents of the United States and obtaining green cards. Mr. J paid Ms. Bartu $3,900 and FJ paid her $2,600. In November and December 1998, Ms. Bartu filed a cancellation of removal pleading for the clients. This pleading requested relief that is only available to aliens after a charging document has been filed with the immigration court by the Immigration and Naturalization Service (INS), vesting jurisdiction in the immigration court. The INS had not filed charges against Ms. Bartu's clients, so filing this pleading had no effect on the clients' immigration proceedings. Ms. Bartu's office filed an application to renew all three clients' employment authorization cards, but Ms. Bartu took no further action on the clients' cases.

Matter 2: In 1998, Ms. Bartu agreed to assist an Iranian citizen in obtaining permanent residency status in the United States. The client, whose student-visa status had expired in 1997, paid Ms. Bartu $3,000. In October 1998, Ms. Bartu filed an application for cancellation of removal. The relief requested in this application is available only after deportation proceedings have begun; however, the client had not been placed in deportation proceedings. Ms. Bartu took the client on a tour of the immigration court in Portland, then took no further action on the client's case.

In early 2000, the client contacted the INS and learned that Ms. Bartu had filed the wrong form. The client made an appointment with Ms. Bartu to discuss his case, but she failed to appear. The client asked that Ms. Bartu explain how she planned to proceed on his case, or return his money. She did not respond to his requests.

Ms. Bartu's conduct violated RPCs 1.1, requiring lawyers to competently represent their clients; 1.3, requiring lawyers to diligently represent their clients; 1.7, prohibiting lawyers from making misleading statements about their services; and 1.5(a), requiring lawyers' fees to be reasonable. The sanction imposed in this matter included consideration of significant aggravating factors.

Russell D. Garrett and Kevin Bank represented the Bar Association. Ms. Bartu represented herself. The hearing officer was Dennis W. Lane.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.
Discipline Notice - Michael T. Johnson-Ortiz

WSBA Bar#: 23580
Member Name: Michael T. Johnson-Ortiz

Action: Disbarment
Effective Date: 09/15/2004

RPC: 1.1 - Competence
1.3 - Diligence
1.5 - Fees
1.7 - Conflict of Interest; General Rule
1.14 - (prior to 9/1/2006) Preserving Identity of Funds and Property of a Client
3.1 - Meritorious Claims and Contentions
8.4 (b) - Criminal Act
8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation
8.4 (i) - Moral Turpitude
8.4 (l) - Violate ELCS

Discipline Notice:

Description:
Michael T. Johnson-Ortiz (WSBA No. 23580, admitted 1994), of Concepción, Chile (formerly of Seattle), was disbarred, effective September 15, 2004, by an order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct between 1998 and 2003 involving abandonment of his practice and multiple acts of misconduct involving immigration clients.

Matter 1: Sometime prior to December 12, 2003, Mr. Johnson-Ortiz decided to leave his law practice and move to Chile. By January 5, 2004, Mr. Johnson-Ortiz had abandoned his law practice. During November and December 2003, Mr. Johnson-Ortiz received money from two clients for work he did not intend to perform. A third client was not able to locate Mr. Johnson-Ortiz to make a payment. Mr. Johnson-Ortiz did not notify any of these clients that he would no longer represent them.

Matter 2: In 1998, Mr. Johnson-Ortiz represented a client in a motion to reopen removal proceedings. In April 1998, Mr. Johnson-Ortiz signed a letter stating that the motion to reopen was pending before a judge, when in fact, he had not filed the motion. Mr. Johnson-Ortiz did not timely file the motion, and the court denied the client’s request to reopen.

Matter 3: In 1999, Mr. Johnson-Ortiz agreed to represent clients who were married while Ms. A was a U.S. citizen and Mr. A was in the United States illegally from Mexico. In September 2000, Mr. Johnson-Ortiz advised Mr. A that he must return to Mexico prior to a visa consular interview. On December 27, 2000, Mr. Johnson-Ortiz suggested that Mr. A return to the United States and apply for a change of status under new regulations, even though those regulations applied only to applicants physically in the United States on December 21, 2000. In January 2001, the client returned to the U.S. illegally. The INS determined that Mr. A did not qualify for permanent resident status under the new regulations, and ordered his voluntary departure. Mr. A returned to Mexico and Ms. A remains in the United States. Mr. Johnson-Ortiz failed to cooperate with the disciplinary investigation of this matter.

Matter 4: In 1999, Mr. Johnson-Ortiz agreed to represent three family members in an attempt to obtain cancellation of their INS removal orders. He intentionally failed to meet with the clients prior to the cancellation hearing. At the hearing, the immigration judge ordered the mother and child to voluntarily depart the United States. Also, during the hearing, Mr. Johnson-Ortiz conceded that the father’s conduct constituted the crime of aiding and abetting the mother and child’s unlawful entry into the country. Mr. Johnson-Ortiz did not discuss this issue with the client, nor contact the mother or child for possible testimony prior to making this concession. In March 2000, Mr. Johnson-Ortiz’s office filed appeals for all three clients. In April 2003, the appeals were still pending. During this time, Mr. Johnson-Ortiz did not advise the client of any other method of obtaining citizenship.

Matter 5: In October 2002, Mr. Johnson-Ortiz represented a client in removal proceedings. Due to an office mistake, the client was not notified of the removal hearing. Mr. Johnson-Ortiz did not attend. Mr. Johnson-Ortiz continued to represent the client, filing a motion to reopen and then appealing the denial of that motion. In the appeal, Mr. Johnson-Ortiz urged his own ineffective assistance of counsel, but did not advise the client of the conflict of interest.

Matter 6: The Bar Association audited Mr. Johnson-Ortiz’s trust account for the period January through August 2003. During that period, he did not maintain check registers or client registers. He also deposited cost advances to his general account, commingled his own funds with the client funds in his trust account, and had insufficient trust account funds to cover 14 client withdrawals. Mr. Johnson-Ortiz paid court filing fees from his trust account for clients who had no money deposited in that account.

Matter 7: In January 2003, Mr. Johnson-Ortiz represented a client in removal proceedings based on a criminal conviction. He did not meet with the client or the expert witness prior to the hearing. During the oral ruling ordering the client’s removal from the United States, Mr. Johnson-Ortiz asked to withdraw from the case based on “repugnance.” Mr. Johnson-Ortiz’s personal repugnance to his client created a conflict of interest and interfered with the representation. Mr. Johnson-Ortiz did not discuss this conflict with his client. Mr. Johnson-Ortiz failed to cooperate with the disciplinary investigation of this matter.

Mr. Johnson-Ortiz’s conduct violated RPCs 1.1, requiring lawyers to provide competent representation to clients; 1.3, requiring lawyers to diligently represent clients; 1.5, requiring lawyers to charge reasonable fees; 1.7(b), prohibiting lawyers from representing a client if the representation is materially limited by the lawyer’s own interests; 1.14(a), requiring lawyers to deposit client funds in an IOLTA account and maintain the account in accordance with the RPCs; 3.1, prohibiting lawyers from making frivolous claims; 8.4(b), prohibiting committing a criminal act [theft] that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; 8.4(i), prohibiting committing an act of moral turpitude; and 8.4(l), prohibiting violating a duty under the Rules for Enforcement of Lawyer Discipline.

Christine Gray represented the Bar Association. Mr. Johnson-Ortiz represented himself. Diehl R. Retting was the hearing officer.

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Discipline Notice - Dennis Freestone Olsen

WSBA Bar#: 22519  
Member Name: Dennis Freestone Olsen  
Action: Disbarment  
Effective Date: 09/19/2006

RPC:  
1.1 - Competence  
1.3 - Diligence  
1.4 - Communication  
3.2 - Expediting Litigation  
8.4 (b) - Criminal Act  
8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation  
8.4 (i) - Violate ELCs

Discipline Notice:  
Description: Dennis F. Olsen (WSBA No. 22519, admitted 1993), formerly of Everett, was disbarred, effective September 19, 2006, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct between 2000 and 2004 involving violation of state and federal tax laws, dishonesty, lack of competence, lack of diligence, failure to communicate with a client, failure to expedite litigation, and failure to cooperate with a disciplinary investigation.

Matter 1: Commencing in 1999, Mr. Olsen was a principal in a succession of law firms that operated a multi-state, low-cost bankruptcy practice. The firm hired local lawyers to practice within the jurisdictions of their respective bar admissions. In 2001, after suffering financial losses in the bankruptcy venture, Mr. Olsen terminated the employment of a firm lawyer working in Portland, Oregon. The lawyer agreed to handle the firm’s Oregon cases if he had either met or provided representation to the client. When the lawyer refused to take over the representation of a client with whom he had had no contact, an argument ensued. During the argument, Mr. Olsen threatened that he would not pay taxes withheld from the lawyer’s paycheck. As a result, the lawyer filed a grievance with the Bar Association.

The lawyer did not receive a 2001 W-2 within the statutory time limit. After requesting that the firm provide him a W-2 for his 2001 earnings, the lawyer belatedly received a W-2 on which the employer was identified as a default predecessor firm and that reflected an invalid employer tax ID number and an incorrect employer address. A second W-2 was later issued for 2001, reflecting all of the tax withholding deductions from the lawyer’s 2001 pay and the correct employer information. During the ensuing disciplinary hearing, Mr. Olsen admitted that he had not paid state or federal tax authorities the taxes withheld from the lawyer’s salary in 2000 or 2001, and that he had not refunded the withheld money to the lawyer. The funds withheld totaled at least $11,398.70. Mr. Olsen also admitted to having filed amended returns that claimed under penalty of perjury that he had paid the lawyer the full amount of his gross wages when, in fact, withholding had occurred. These additional amended returns were filed by Mr. Olsen and submitted to the Bar Association in an attempt to mislead the Bar Association in its investigation.

Matter 2: On April 7, 2000, Mr. Olsen met with and agreed to represent a client in an immigration matter for a $1,500 fee. In March 2000, the Board of Immigration Appeals had affirmed an immigration judge’s denial of the client’s asylum application and issued a deportation order. The Northwest Immigrant Rights Project, which had been assisting the client through a volunteer lawyer, explained the client’s options in a letter dated March 30, 2000. The letter advised the client that although a notice of appeal to the Ninth Circuit Court of Appeals had been filed, the volunteer lawyer would no longer be available to assist the client. Other options mentioned in the letter included filing a motion to reopen a previous I-485 petition (application to register permanent residence or adjust status), or a motion to reopen the asylum application.

The agreed purpose for the representation was for Mr. Olsen to seek an adjustment of the client’s immigration status and to assist him in obtaining a green card. Mr. Olsen did not prepare a fee agreement or any description of his duties. At the initial meeting, the client paid Mr. Olsen $350 and gave him a copy of his file, which included copies of previously filed pro se petitions and applications, as well as the March 30 letter from the Northwest Immigrant Rights Project.

After undertaking the representation, Mr. Olsen did not take any steps to obtain the client’s INS file, to review the BIA legal files or any other public files, or to discern the action that needed to be undertaken prior to the expiration of the time to bring a motion to reopen. No motion to reopen was ever filed by Mr. Olsen, despite having had almost two months between the date hired and the deadline for filing the motion.

In January 2000, the client paid Mr. Olsen $800. Mr. Olsen completed and filed a second I-485 application and had the client pay a second I-485 penalty fee of $1,000. This second application was a useless act, since the application would not be adjudicated unless and until the client’s immigration application had been reopened by motion, and Mr. Olsen had already allowed the time to bring such a motion to pass. Additionally, the application contained several significant errors, including the incorrect assertions that the client was not married and that the client was not involved in a deportation proceeding. After filing the second I-485 application, Mr. Olsen failed to do any legal work on behalf of the client during the next eight months he represented him, and he had little or no contact with the client. The client was subsequently referred to another immigration lawyer, who accepted the case on a pro bono basis and promptly moved to reopen the asylum issue based on the fact that the client had not received effective assistance of counsel from Mr. Olsen. After reviewing the facts surrounding Mr. Olsen’s representation, INS agreed to a joint motion to reopen the earlier denial of the first I-485 application.

Matter 3: During the disciplinary investigations and proceeding arising from the above-described matters, Mr. Olsen engaged in a pattern of knowingly and willfully failing to comply with Bar Association requests for information and documents and the hearing officer’s orders regarding compliance.

Mr. Olsen’s conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interest of the client; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, violation of federal and Oregon state tax laws, and theft) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law; and RPC 8.4(f), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 1.5, 5.3(e)(4), 5.3(c), 10.11(g), and 10.13(e)).

Marsha A. Matsumoto and Debra J. Slater represented the Bar Association. Michael S. Cullen and Leland G. Ripley represented Mr. Olsen. Donald W. Carter was the hearing officer.
The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.
Discipline Notice - Satwant Singh Pandher

**WSBA Bar#:** 17269  
**Member Name:** Satwant Singh Pandher  
**Effective Date:** 02/06/2007

**Action:** Disbarment  

**RPC:**  
- 1.1 - Competency  
- 1.3 - Diligence  
- 1.4 - Communication  
- 1.5 - Fees  
- 1.9 - (prior to 9/1/2006) Conflict of Interest; Former Client  
- 1.15 - (prior to 9/1/2006) Declining or Terminating Representation  
- 3.1 - Meritorious Claims and Contentions  
- 4.1 - Truthfulness in Statements to Others  
- 4.2 - Communication with Person. Represented by Counsel  
- 8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation

**Description:** Satwant Singh Pandher (WSBA No. 17268, admitted 1987), of Everett, was disbarred, effective February 6, 2007, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct between 1998 and 2005 in a number of matters involving multiple acts of misconduct.

Mr. Pandher's conduct establishing grounds for discipline included the following:

- Failing to diligently pursue and protect client interests in three immigration matters and one boundary dispute matter.  
- Failing to communicate with clients, making misrepresentations to clients about the status of their cases, failing to respond to client requests for information, and instructing a client not to contact him or the tribunal in order to conceal his own nonfeasance.  
- Consulting with an individual about a dissolution matter and then representing the adverse party in the same proceeding without obtaining written consent after a full disclosure of material facts.  
- Communicating with a party represented by counsel about subject matter of the representation.  
- Continuing to represent a client in an immigration matter despite an inability to communicate with the client owing to a language barrier.  
- Misrepresenting facts to an adverse party.  
- Failing to communicate to a client the basis, rate, and factors involved in determining the fee charged, charging an unreasonable fee, and charging a fee for which no services were performed.  
- Failing to give a client reasonable notice that he was terminating the representation and failing to refund the unearned portion of the fee.

Mr. Pandher's conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer's fee to be reasonable; RPC 1.5(b), requiring a lawyer, when the lawyer has not regularly represented the client or if the fee agreement is substantially different than that previously used by the parties, to communicate to the client the basis or rate of the fee or factors involved in determining the charges for the legal services; RPC 1.9(a), prohibiting a lawyer who has formerly represented a client in a matter from representing another client in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation and a full disclosure of the material facts; former RPC 1.15(d), requiring a lawyer to 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 other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned; RPC 3.1, prohibiting a lawyer from bringing or defending a proceeding, or asserting or controverting an issue therein, unless there is a basis in law and fact for doing so that is not frivolous; RPC 4.1, prohibiting a lawyer, in the course of representing a client, from knowingly making a false statement of material fact or law to a third person; RPC 4.2, prohibiting a lawyer, in representing a client, from communicating about the subject of the representation with a party to the representation who knows to be represented by another lawyer in the matter; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Kathleen A.T. Dassel represented the Bar Association. Mr. Pandher did not appear either in person or through counsel. Moses F. Garcia was the hearing officer.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.
Discipline Notice - Courtenay D. Babcock

WSBA Bar#: 22674
Member Name: Courtenay D. Babcock
Action: Disbarment
Effective Date: 04/07/2008

RPC:
1.1 - Competence
1.3 - Diligence
1.4 - Communication
1.5 - Fees
8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation
8.4 (d) - Conduct Prejudicial to the Administration of Justice
8.4 (f) - Violate ELCs

Discipline Notice:
Description: Courtenay D. Babcock (WSBA No. 22674, admitted 1993), of Blaine, was disbarred, effective April 7, 2008, by order of the Washington State Supreme Court following a default hearing. This discipline was based on conduct in five client matters involving failure to provide competent representation, lack of diligence, failure to communicate, charging unreasonable fees, failure to protect clients' interests, engaging in dishonest conduct, engaging in conduct prejudicial to the administration of justice, and violating a duty imposed by or under the Rules for Enforcement of Lawyer Conduct.

Between April 2000 and August 2006, Mr. Babcock engaged in the following conduct:

- Abandoning his practice and failing to diligently represent and communicate with clients in four separate matters;
- Failing to complete and process an application to change a client's status in an immigration matter;
- Failing to provide to one client a written fee agreement or an explanation of fees or an accounting of time Mr. Babcock spent on the client's case, and failing to render an accounting to another client of the funds held in Mr. Babcock's trust account;
- Failing to perform any legal services on behalf of a client in one matter and then failing to refund her deposit, and failing to perform any legal services on behalf of a second client in another matter while obtaining payment of approximately 20 percent (or $11,100) of her settlement proceeds without confirming the agreement in writing;
- Retaining an entire $2,500 advance fee deposit while having performed only a single minor legal service on behalf of the client, and then failing to refund the unearned portion of the advance fee deposit, thereby charging an unreasonable fee for the minor legal service performed;
- Withdrawing a client's advance fee deposit from his trust account without the client's knowledge, consent, or authorization, and using it for his own purposes;
- Failing to respond to a client's requests and to communicate with a client about the refund of his $3,000 advance fee deposit, and failing to promptly refund that advance fee deposit;
- Misrepresenting to the Association the status of his practice and his relationship with a client; and
- Failing to cooperate with the Bar Association's investigation in three matters and misrepresenting to the Bar Association in another matter that a client was not his client and that he was not receiving a share of that client's settlement proceeds.

Mr. Babcock's conduct violated RPC 1.1, requiring a lawyer to provide competent representation to a client; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer's fee to be reasonable; RPC 1.5(b), requiring that when a lawyer has not regularly represented a client, or if the fee agreement is substantially different than that previously used by the parties, the lawyer communicates to the client within a reasonable time the basis or rate of the fee or the factors involved in determining the charges, preferably in writing; former RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client; RPC 1.5(e), allowing a division of fee between lawyers who are not in the same firm to be made only if the division is between the lawyer and a duly authorized lawyer referral service, or the division is in proportion to the services provided by each lawyer, by written agreement with the client, each lawyer assumes joint responsibility for the representation, the client is advised of and does not object to the participation of all the lawyers involved, and the total fee is reasonable; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(f), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Kathleen A.T. Dassel represented the Bar Association. Mr. Babcock did not appear either in person or through counsel. Joseph D. Bowen was the hearing officer.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.
Discipline Notice - Charles L Smith

WSBA Bar#: 5357
Action: Disbarment

RPC:
1.3 - Diligence
1.4 - Communication
1.5 - Fees
5.3 - Responsibilities Regarding Nonlawyer Assistants
5.4 - Professional Independence of a Lawyer
5.5 - Unauthorized Practice of Law
7.1 - Communications concerning a Lawyers Services
7.4 - Communication of Fields of Practice
8.4 (a) - Violate the RPCs
8.4 (b) - Criminal Act
8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation
8.4 (i) - Moral Turpitude
1.15A - Safeguarding Property

Description:
Charles L. Smith (WSBA No. 5357, admitted 1973), of Bellevue, was disbarred, effective September 17, 2010, by order of the Washington State Supreme Court. This discipline was based on conduct involving failure to act diligently in representing a client, failure to communicate, trust account irregularities, failure to properly supervise non-lawyer staff, fee splitting, the unauthorized practice of law, misrepresentations to clients, violations of the Rules of Professional Conduct, and dishonest conduct. Charles L. Smith is to be distinguished from Charles L. Smith, of Issaquah; Charles E. Smith, of Seattle; and Charles Z. Smith, of Olympia.

From about mid-October 2006 through March 2007, Mr. Smith was employed as a contract attorney for a business that was in fact owned by two non-lawyers. In 2006, Mr. Smith assisted the two non-lawyers in establishing a new limited liability entity whose purpose was to provide legal services. Mr. Smith assisted in transferring the legal work being done by the former business to the new entity, and established himself as the supervisory lawyer of the new entity. Mr. Smith was aware the two non-lawyers, who were neither registered immigration specialists nor limited practice officers, were using this entity to provide legal services to clients, who were mostly recent immigrants from the former Soviet Union. During this time, Mr. Smith engaged in the following conduct:

- Allowed non-lawyer staff to have signature authority over the IOLTA account.
- Failed to make reasonable efforts to ensure that the entity that Mr. Smith appeared to supervise had in effect measures to ensure that the non-lawyer staff's conduct was compatible with the professional obligations of the lawyer.
- Shared fees with non-lawyers and allowed them to control a business whose purpose was to provide legal services.
- Aided and abetted in the unauthorized practice of law by allowing non-lawyers to provide legal services without supervision. This included allowing non-lawyers to complete and file immigration forms, provide legal advice, complete and file false pro se dissolution forms, and work on personal injury cases with little or no supervision.
- Allowed his name and likeness to be used in advertising publications describing the two non-lawyers as an "immigration specialist" and "auto accident specialist," and allowed advertising that led clients to believe they were hiring Mr. Smith to represent them when in fact non-lawyers largely controlled the practice.
- Failed to communicate with clients, did not communicate about fees, and failed to diligently pursue three clients' matters.

Mr. Smith's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to act with reasonable care in representing a client when the client's informed consent is required by the Rules, reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, consult with the client about any relevant limitation on the lawyer's conduct, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(b), requiring the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible to be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation; RPC 1.15A(h)(9), stating that only a lawyer admitted to practice law may be an authorized signatory an IOLTA trust account; RPC 5.3, requiring a lawyer with managerial authority in a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that a non-lawyer employee's conduct is compatible with the professional obligations of the lawyer, and to be responsible for the conduct of such a person; RPC 5.4, prohibiting a lawyer or law firm from sharing legal fees with a non-lawyer or from forming a partnership if any of the activities of the partnership consist of the practice of law; RPC 5.5(a), prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assisting another in doing so; RPC 7.1, prohibiting a lawyer from making a false or misleading communication about the lawyer or the lawyer's services; RPC 7.4(d), prohibiting a lawyer from being or implying that a lawyer is a specialist in a particular field of law, except upon issuance of an identifying certificate, award, or recognition by a group, organization, or association; RPC 8.4(a), prohibiting a lawyer from violating or attempting to violate the Rules of Professional Conduct, or knowingly assisting or inducing another to do so; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any other act which reflects disregard for the rule of law.

Joanne S. Abeison represented the Bar Association. Mr. Smith represented himself. Gregory A. Dahl was the hearing officer.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8267.

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Discipline Notice - Shange Holden Petrini

WSBA Bar#: 40210
Member Name: Shange Holden Petrini
Action: Disbarment
Effective Date: 12/27/2010
RPC: 1.3 - Diligence
     1.4 - Communication
     1.5 - Fees
     1.16 - Declining or Terminating Representation

Discipline Notice:
Description: Shange H. Petrini (WSBA No. 40210, admitted 2008), of Canyon, California, was disbarred, effective December 27, 2010, by order of the Washington State Supreme Court following a default hearing. This discipline was based on conduct in two matters involving failure to act diligently, failure to communicate, excessive charges, failure to protect clients' interests, and failure to cooperate in a Bar Association investigation.

Matter No. 1: On October 21, 2008, Client A hired Mr. Petrini to file a dissolution action and paid him a $1,000 advance fee. Mr. Petrini met with Client A to sign the dissolution documents; during the meeting, Client A paid Mr. Petrini an additional $175. Mr. Petrini did not file the dissolution documents. He instead mailed the documents to Client A's husband, who eventually returned the documents with some changes. Client A called Mr. Petrini and left a message, stating that she agreed to the changes. Mr. Petrini did not return Client A's call or return the messages and e-mails she subsequently left in an effort to contact him. Mr. Petrini never filed Client A's dissolution action. He moved to California and abandoned his practice without informing Client A of his move or that he would no longer be working on her case.

In May 2009, Client A sent Mr. Petrini messages terminating the representation, and requesting a refund and copies of her documents. Mr. Petrini did not respond to Client A's messages or e-mails and never sent her a refund or copies of the documents he prepared. Client A could not afford to hire another lawyer to assist her with her dissolution.

On July 24, 2009, Client A filed a grievance against Mr. Petrini, a copy of which was forwarded to him with a request to respond to the grievance. Mr. Petrini failed to respond or cooperate in any way with the Bar Association's investigation of Client A's grievance, and failed to respond to the Bar Association's petition for interim suspension. On January 28, 2010, the Supreme Court suspended Mr. Petrini's license pending his cooperation with disciplinary proceedings. Mr. Petrini failed to submit the required affidavit of compliance, and remained suspended from the practice of law until his disbarment.

Matter No. 2: On March 6, 2009, Client B hired Mr. Petrini and paid him $2,000 to prepare and file an H-1B visa application. Client B told Mr. Petrini that it was important to file the application as close to April 1, 2009, as possible because his student visa was set to expire and his continued employment was dependent on the visa application being granted. Mr. Petrini prepared the necessary documents, which Client B signed. On April 7, 2009, Client B e-mailed Mr. Petrini to ask if there was anything else he needed to do. Mr. Petrini did not respond to Client B's e-mail or to any of Client B's subsequent attempts to contact him over the next two months. Mr. Petrini moved to California and abandoned his practice without informing Client B of his move or that he would no longer be working on Client B's case.

On June 11, 2009, Client B called the United States Citizenship and Immigration Service and learned that Mr. Petrini never submitted his application. Client B e-mailed Mr. Petrini again and told him that he wanted to cancel his contract and get his $2,000 back. Mr. Petrini did not respond. On July 1, 2009, Client B e-mailed Mr. Petrini again, demanding his money back. Mr. Petrini did not respond.

In July 2010, Client B filed an H-1B visa application himself and later paid another lawyer $1,500 to complete the process for him. In October 2009, Client B filed a grievance against Mr. Petrini, which the Bar Association forwarded to Mr. Petrini and requested a response. Mr. Petrini did not respond to that or to subsequent requests. To date, Mr. Petrini has not responded to Client B's grievance.

In January 2010, Mr. Petrini refunded $1,000 to Client B. Client B wrote back to Mr. Petrini requesting the rest of the advance fee. Mr. Petrini did not respond. Client B went through great stress and aggravation, and had to pay another lawyer to complete the work that he had hired Mr. Petrini to do.

Mr. Petrini's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client's informed consent is required, reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, and consult with the client about any relevant limitation on the lawyer's conduct; RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses; RPC 1.16(d), requiring a lawyer, upon termination of representation, to take steps to the extent reasonably practicable to protect a client's interests; and RPC 8.4(d), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Francesca D'Angelo represented the Bar Association. Mr. Petrini represented himself. David A. Thorner was the hearing officer.

The discipline information may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-3207.
Discipline Notice - Michael Primont

WSBA Bar#: 20568  
Member Name: Michael Primont

Action: Disbarment  
Effective Date: 06/02/2011

RPC: 8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation

Discipline Notice:
Description: Michael Primont (WSBA No. 20568, admitted 1991) of Seattle, was disbarred, effective June 2, 2011, by order of the Washington State Supreme Court following approval of a stipulation. Mr. Primont affirmatively admitted that if the matter were to proceed to a public hearing, there is a substantial likelihood the Bar Association could prove by a clear preponderance of the evidence the facts and misconduct, but did not affirmatively admit to the facts and misconduct herein. This discipline is based on conduct involving immigration fraud. According to the Stipulated Facts:

Since 2005, Ms. X has worked for Mr. Primont as a paralegal. Mr. Primont paid Ms. X $7,000 to marry Mr. W, an alien from China. On April 23, 2007, Ms. X and Mr. W were married in Las Vegas, Nevada. Mr. Primont was a witness to their marriage, Section 245(a) of the Immigration and Nationality Act prohibits an alien from seeking to procure a visa by fraud or willfully misrepresenting a material fact. On December 17, 2007, Citizenship and Immigration Services (CIS) officers conducted an unannounced visit to Ms. X's residence in Kent, Washington. Ms. X admitted that her marriage to Mr. W was a sham, that the only purpose of the marriage was to aid Mr. W's immigration case, and that Mr. Primont and Mr. W were in a relationship. On January 28, 2008, Ms. X filed for dissolution from Mr. W and the case concluded in May 2008. Ms. X withdrew her I-864 Affidavit of Support. In May 2008, Mr. Primont and Mr. W entered into a domestic partnership in Washington State. In July 2008, Mr. Primont married Mr. W in the State of California. In April 2009, Mr. W's I-485 application to register permanent residence or adjust status was denied by CIS on the basis of the fraudulent marriage. On November 19, 2010, the immigration judge accepted a prehearing stipulation and granted Mr. W voluntary departure to China in lieu of removal on or before December 20, 2010.

Mr. Primont's conduct violated RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Erica W. Temple represented the Bar Association. Kurt M. Bulmer represented Mr. Primont.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.
WSBA Ethics Advisory Opinions
Advisory Opinion: 1204
Year Issued: 1988
RPC(s): RPC 1.1; 1.4 (b); 1.13
Subject: Client under disability; inability to understand proposed plea agreement

The Committee agreed with the opinion of the Committee members memorandum which follows:

This is a potential ethics question which never came to pass. Client went into attorney's office to keep her out of jail. She was suffering from at least a partial mental disability. She was receiving disability benefits as a result of her mental condition and is without funds to retain counsel. Attorney went to arraignment and obtained discovery. Prosecutor wanted client to obtain treatment or leave town and was willing to dismiss any charges with no restitution to be made if she would keep appointments with her mental health counselor.

Client indicated that this was okay with her but she didn't understand it. Attorney asks whether he has authority to enter into a plea agreement when the client is not capable of understanding it or does he have to obtain a Guardian Ad Litem pursuant to RPC 1.13.

This particular attorney has had two or three requests over the past 15 months and is great at setting up straw men. It should be pointed out to him that the Rules of Professional Conduct PREAMBLE provides "that justice is based upon the rule of law grounded in respect for the dignity of the individual ..." and a "lawyer's ... role requires an understanding by lawyers of their relationship with and function in our legal system."

Under TERMINOLOGY we find that "consult" or 'consultation' denotes communication of information reasonably sufficient (emphasis added) to permit the client to appreciate the significance of the matter in question." Further, "reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer. RPC 1.1 as it relates to competence states "a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." RPC 1.4 (b) states "a lawyer shall explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

Last, but not least, RPC 1.13 - Client Under Disability - provides that: "(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of a minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."

(b) goes on to provide that: " When the lawyer reasonably believes that the client cannot adequately act in the client's own interest, a lawyer may seek the appointment of a guardian or take other protective action with respect to a client."

In light of the foregoing and the fact that the permissive "may" is used, it is respectfully suggested that where the attorney undertook to be the agent of the client, he would violate
his responsibilities not to accept a no strings attached dismissal of the charges on behalf of
the client - even if the client were incapable of understanding. The reasoning behind this is
that it is in the client's best interests and there can be no dispute by anyone that nothing is
being given up on behalf of the client.

It is suggested that had the attorney not done so, he could very well be subject to discipline
for violation of the foregoing rules.

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the
Committee on Professional Ethics (CPE) or its predecessor, the Rules of Professional
Conduct Committee. Advisory Opinions issued by the CPE are distinguished from earlier
RPC Committee opinions by a numbering format which includes the year followed by a
sequential number. Advisory Opinions are provided pursuant to the authorization granted by
the Board of Governors, but are not individually approved by the Board and do not reflect
the official position of the Bar association. Laws other than the Washington State Rules of
Professional Conduct may apply to the inquiry. The Committee's answer does not include or
opine about any other applicable law other than the meaning of the Rules of Professional
Conduct.
Advisory Opinion: 1528
Year Issued: 1993
RPC(s): RPC 1.6; 5.4; 5.5; 7.3 (a)
Subject: Ancillary business; assisting unauthorized practice of law; office sharing with nonlawyer

[The lawyer proposed setting up a business to provide immigration and passport photos and package and arrange immigration petitions for filing. The lawyer would share offices with the business and the business would refer potential clients to the lawyer.] The Committee was of the unanimous opinion that there was a potential for problems with assisting the unauthorized practice of law. If a person asked [an] employee [of the business] to refer that person to you, the Committee was concerned about a possible violation of RPC 7.3(a). The co-location of [the business] and [your] law offices could also present possible violations of RPC 7.3(a). In addition, the Committee was concerned about problems with preserving client confidences. The Committee feels that you would need separate offices, telephone numbers, and bank accounts. The Committee wanted to remind you that client files should not be accessible to [the business's] employees. The Committee was of the opinion that legal fees can be paid by credit card.

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessor, the Rules of Professional Conduct Committee. Advisory Opinions issued by the CPE are distinguished from earlier RPC Committee opinions by a numbering format which includes the year followed by a sequential number. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.

http://mcle.mysba.org/10/print.aspx?ID=609
Advisory Opinion: 1538
Year Issued: 1993
RPC(s): RPC 7.4
Subject: Advertising; office sign listing "Notary Public" or area of practice

The Committee is of the opinion that there is no prohibition against listing Notary Public or General Practice of Immigration on an office sign so long as it does not constitute a misrepresentation of a lawyer's experience and ability.

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Advisory Opinion: 1563
Year Issued: 1994
RPC(s): RPC 1.5
Subject: Fee agreement stating files belong to firm, preventing client from settling case without approval and permitting firm to withdraw at its discretion

The Committee reviewed and discussed the Legal Services Agreement (Agreement) that you recently revised. The Committee was of the opinion that there are violations of the Rules of Professional Conduct throughout the Agreement, as well as substantive legal problems. The provisions in the Agreement which are in violation of the Rules of Professional Conduct include, but are not limited to, the following Sections: Section VII (stating that files belong at the law firm); Section XI (stating that the client shall not settle or compromise the claim without the law firm's approval); and Section XII (stating that the law firm can sever the relationship at any time at its discretion).

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessor, the Rules of Professional Conduct Committee. Advisory Opinions issued by the CPE are distinguished from earlier RPC Committee opinions by a numbering format which includes the year followed by a sequential number. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.
I have been instructed by the Rules of Professional Conduct Committee to respond to your ethics inquiry #1863 concerning monies held in trust account at conclusion of services.

The Committee has reviewed your inquiry and determined the following:

Facts:

You were retained to represent Husband in connection with his application for U.S. citizenship. Husband and Wife were recently married, and Wife was to be the sponsoring petitioner for Husband's citizenship petition. Your flat fee of $1,500 was paid by wife, and wife also paid $250 toward filing fees and copy costs, the latter amount having been deposited into your trust account. Wife was advised that Husband is your client and that any privileges belong only to him. There is a retainer agreement that says, inter alia, that upon conclusion of services, whether by withdrawal or otherwise, any funds other than earned fees will be returned to "Client."

Wife has subsequently advised you that she no longer wants to support Husband and also wants a full refund of amounts paid to date. You reminded Wife that Husband was the client, and indicated that you would speak with Husband about the funds. Client asked you to give him some time to work things out with Wife, and to hold all funds in the meantime, since the money could still be used towards the case if Wife changes her mind.

Questions:

1. How do you handle the $250 in the trust account? If Wife requests refund of unexpended funds, and Husband objects, whose desires control?

2. Are you obligated to return any of the flat fee that was paid up front if you have done substantially most of the work?

3. If Husband and Wife reconcile, do you have an ethical problem filing petition with INS indicating a valid marriage because you have personal knowledge that marriage was not stable to begin with?

Analysis:

Rules implicated: RPCs 1.5, 1.8(f), 1.14, 3.1, 3.3, 4.1 and 8.4(c).

At the outset, we note that your description of the problem implies that there is no attorney-client relationship between you and Wife, and we have accepted this premise for purposes of this analysis. Given that the existence of such a relationship often depends upon the
RPC 1.5 requires that your fee be reasonable, and sets forth several factors to be considered in determining reasonability. Determining whether a flat fee of $1,500 for filing and pursuing a citizenship petition is reasonable, and whether the work performed by you prior to being advised that the petition may not proceed constituted "substantially most" of the work contemplated, is beyond the scope of this Committee.

RPC 1.5 also requires that the terms of the fee arrangement be clearly communicated to the client, preferably in writing. It appears that there was a written retainer agreement that presumably satisfied this requirement. It appears that both Husband and Wife signed the agreement. Subject to the reasonability requirement, the precise nature of the arrangement between you, Husband and Wife is not regulated by the RPCs, and any questions arising under that retainer agreement would be resolved by the application of general contract law, and those questions would be beyond the scope of this Committee.

RPC 1.8(f) prohibits accepting payment of fees from a third party unless the client consents and your independence is not thereby compromised. Although it appears from your representation that these conditions have been satisfied, a final determination would require a factual inquiry that is beyond the scope of this Committee. Your inquiry letter posits that the fees were paid by Wife and implies that these were her separate funds rather than community property under her control. Again whether that is accurate is beyond our ability to determine.

RPC 1.14 requires that funds belonging to the client must be deposited into an IOLTA trust account. Clearly this applies to the $250.00 paid for expenses. The status of the $1,500 is less clear. If it is indeed a flat fee that was due upon signing the retaining agreement, it became your funds upon payment and need not be deposited into the trust account. On the other hand, if it was in the form of a deposit for fees to be earned in the future, it could only be withdrawn as those fees are earned, with notice to the client, and could not be withdrawn so long as the client contests the right to withdraw. Again, how these general rules apply in this situation would require a factual determination that the committee is not in a position to make.

The third question that you posed requires us to speculate that Husband and Wife will report a reconciliation and request that you initiate the citizenship petition, and further to speculate about your state of knowledge at that time about the stability of the marriage and its implications for federal immigration law. Obviously, there are too many variables to determine exactly how this scenario might play out, but the following observations may be of assistance to you.

RPC 3.1 and 3.3 prohibit an attorney from making legal or factual arguments to a tribunal that are frivolous or false, and require that you disclose any previously undisclosed information the nondisclosure of which is necessary to avoid assisting a fraudulent action. RPC 4.1 similarly prohibits making statements to a third party that are false, and requires disclosure of facts the nondisclosure of which is necessary to avoid assisting a fraudulent or criminal act. Which rule is applicable depends on whether one views the Immigration and Naturalization Service as a "tribunal" or a "third party," but either way you must not prepare or submit documents that include statements that you knows to be false or misleading.

Finally, RPC 8.4(c) prohibits you from engaging in conduct involving dishonesty, fraud,
deceit or misrepresentation. Should Husband and Wife request that you initiate citizenship petitions in the future, your conduct should be guided by these general rules.

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessor, the Rules of Professional Conduct Committee. Advisory Opinions issued by the CPE are distinguished from earlier RPC Committee opinions by a numbering format which includes the year followed by a sequential number. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.
Advisory Opinion: 1787
Year Issued: 1997
RPC(s): RPC 7.1; 7.2(a)
Subject: Advertising; comparison of one lawyer's services with another lawyer; misleading

Facts Presented: Lawyer who has an immigration practice learned that another immigration lawyer does not fill out immigration forms. Lawyer would like to run an advertisement stating: "At least one prominent Seattle immigration firm does not fill out immigration forms for you. Do not give someone else a lot of money and then do the work yourself. Call my offices . . .".

Applicable Rule: RPC 7.1

RPC Committee Opinion:

(1) A prospective client could reasonably infer from the proposed language that "the work" that an immigration lawyer does for his or her clients usually includes or should include "fill[ing] out the immigration forms". The proposed language omits the facts (a) that an important part of any lawyer's job is to advise the client of his or her rights, and options, as opposed to simply filling out forms, and (b) that there could be circumstances in which it is in the client's best interests to fill out his or her own immigration form, e.g., where filling out the forms does not require the expertise of a lawyer and having a lawyer or staff member do it would unnecessarily increase the cost to the client. The potential effect of the proposed language is to mislead the prospective client in violation of RPC 7.2(a).

(2) Although the current practice of the inquiring lawyer's competitor may be to require clients to fill out their own forms, that practice might change, especially in response to the proposed advertisement, in which event the advertisement would contain inaccurate and therefore misleading information. This problem is inherent in any form of advertising that includes statements about the practices of the lawyers, especially if the advertisement appears in a publication like the Yellow Pages, which remains in print for a full year.

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessor, the Rules of Professional Conduct Committee. Advisory Opinions issued by the CPE are distinguished from earlier RPC Committee opinions by a numbering format which includes the year followed by a sequential number. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.
Advisory Opinion: 1930
Year Issued: 2000
RPC(s): RPC 1.1; 1.2; 1.3; 1.4; 1.6; 5.4(a); 5.4 (b); 5.5(a)
Subject: Formation of a .com immigration company to provide legal services that is owned by nonlawyers

[Editor's Note: Ethics inquiry #1930 concerns the formation of a .com immigration company.]

The Committee has reviewed your inquiry and determined the following:

The inquirer asks whether it is ethical for a Washington lawyer and his firm to participate as owners in a company, in which other owners are presumably not lawyers, that will market the firm’s legal services through a Web site based in the state of New Mexico.

The committee stated that the sharing of fees by a lawyer with a non-lawyer is expressly forbidden by RPC 5.4(a). Engaging in the practice of law with non-lawyers is prohibited by RPC 5.4(b). An arrangement where a non-lawyer directs or regulates the lawyers professional judgment is prohibited by RPC 5.4(c). Practicing law in states in which you are not admitted as a lawyer, may violate the laws of those jurisdictions and thereby violate of RPC 5.5(a). It is not clear that the communication envisioned by RPC 1.2, 1.3 and 1.4 can or will occur. It is not clear that the practice of answering client inquiries over the Internet will be sufficient to discharge the lawyer’s duty to act competently under RPC 1.1. Additionally, leaving aside technology issues related to confidentiality of Internet use, it appears that non-lawyers not employed by your firm will have access to potentially confidential communications which may thereby violate RPC 1.6.

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessor, the Rules of Professional Conduct Committee. Advisory Opinions issued by the CPE are distinguished from earlier RPC Committee opinions by a numbering format which includes the year followed by a sequential number. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.
Advisory Opinion: 1933
Year Issued: 2000
RPC(s): RPC 1.6(a); 1.6(b)
Subject: Client confidentiality

[Editor's Note: Ethics inquiry #1933 concerns client confidentiality.]

The Committee has reviewed your inquiry and determined the following:

The inquiring lawyer advises that he received an urgent voice mail message from an employee of a restaurant where had dined in the past. The caller indicated that she needed to speak with an attorney and requested a return call as soon as possible. The inquiring lawyer returned the phone message and learned that the restaurant employee was involved in a contract dispute. The lawyer states that he advised the employee that he was engaged in L.L.M. studies, was not actively practicing law and that she should hire an attorney.

The woman told the inquiring lawyer that when she had been unable to reach him immediately, she had called another lawyer, and had an appointment for the following morning. The inquiring lawyer told the woman that she should direct her questions to that lawyer, and that he could not advise her in the matter. The inquiring lawyer states that as he was politely trying to end the conversation, the woman advised him that her U.S. travel visa had expired and that consequently she was in this country illegally. She asked whether this fact could come out in court and whether she should reveal her illegal status to the attorney with whom she was to meet. The inquiring lawyer states that he told the woman that he could not advise her, and that she should be honest with her lawyer, who could advise her. The inquiring attorney states that the woman’s English is very poor and that she is not familiar with the U.S. legal system. The inquiring lawyer believes that he was the only attorney the woman knew at the time that she called him and further states his belief that the woman thought she was engaged in a confidential communication with an attorney who she trusted.

Whether RPC 1.6(a) applies in the circumstances about which you inquire depends upon whether an attorney-client relationship existed when you learned of the employee’s immigration status. That question has a both a subjective and objective component. First, the woman must have subjectively believed that an attorney-client relationship existed and second, her belief must have been objectively reasonable under the circumstances, including the attorney’s words or actions. Dietz v. Doc, 131 Wn. 2d 835, 843, 935 P.2d 611 (1997). The existence of such a relationship (and thus, the applicability of RPC 1.6 (a)) is a question of fact. Bohn v. Cody, 119 Wn.2d 357, 363, 832 P.2d 71 (1992).

In this case, the existence of an attorney-client relationship (and the applicability of RPC 1.6 (a)) turns at least in part upon a fact that is not within the knowledge of the Committee - i.e., whether the woman subjectively believed that you were acting as her attorney. Moreover, whether such a belief would have been objectively reasonable depends on all of the circumstances, and may include circumstances that are not within the Committee’s knowledge. For these reasons, the Committee is not in a position to answer your inquiry.
Assuming that an attorney-client relationship existed, RPC 1.6(b) would not require you to inform the INS. Whether in the absence of an attorney-client relationship, an affirmative obligation exists requiring you to advise the INS of the information that you received is a legal question separate from the Rules of Professional Conduct and the Committee does not address it.

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Advisory Opinion: 2025  
Year Issued: 2003  
RPC(s): RPC 1.7, 1.8, 7.3  
Subject: referring legal clients to real estate business; conflict of interest

You have asked the RPC Committee to advise you whether a Disclosure and Authorization form that you intend to use when referring your legal clients to a real estate office with which you are associated satisfies relevant RPCs relating to conflicts of interest. For the reasons expressed below, the Committee concludes that it would not.

As a preliminary matter, the Committee sees very serious conflicts of interest in the circumstances you present. In all likelihood, there will be circumstances where it would not be permissible for you to represent clients who you have referred to the real estate office with which you are associated, or real estate clients who wish to engage your legal services.

Under RPC 1.7(b), a lawyer “shall not represent a client if the representation may be materially limited by the lawyer’s responsibilities to a third party or by the lawyer’s own interests” unless (1) the lawyer reasonably believes the representation will not be adversely affected, (2) and the client consents in writing after full disclosure of the material facts. See RPC Terminology “Reasonable belief” or “reasonably believes”… denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.”; People v. Mason, 938 P.2d 133, 136 (1997)(“The key provision is that the lawyer must reasonably believe, not just have a subjective belief that the representation will not be adversely affected.”)

Whether you could “reasonably believe” that the representation will not be materially affected by your responsibilities to your real estate office, or by your self-interest in your capacity with that office, will depend upon the nature of the legal representation and its relationship to the real estate transaction. For example, if a client is seeking your representation to protect the client’s interests in effectuating the real estate transaction for which the referral was made, it may be very difficult to argue that you could “reasonably believe” that the representation would not be adversely affected. The Disclosure and Authorization form reflects this reality when it states:

“[The lawyer] will not be able to advise client on any issues involving disputed terms of the listing agreement signed or to be signed by clients with the aforementioned realty office, or any alleged breach (violation) or lack of adequate performance by the agents under such agreement.”

On the other hand, if the representation is unrelated to the real estate transaction, it is likely that RPC 1.7(b) would not apply. Under such circumstances, neither your obligations to the real estate office or your self-interest would materially limit the representation. Whether a particular representation would be adversely affected by your self-interest or by your obligation to your real estate office thus will require you to make an individualized reasonable professional determination.

Second, where RPC 1.7(b) would permit continued representation, the rule still requires full
disclosure concerning the material facts, and written consent from the client. In addition, RPC 1.8(a) would apply when you refer a client to your real estate office because you are entering into a business transaction with the client. RPC 1.8(a) provides that a lawyer representing a client in a matter "shall not enter into a business transaction" with the client unless: (1) the transaction is fair and reasonable, (2) its terms are fully disclosed to the client in writing in language that can be reasonably understood by the client, (3) the client is given a reasonable opportunity to seek independent legal advice, and (4) the client consents.

It is not clear whether you intend your Disclosure and Authorization form to provide all information and consultation required by RPC 1.7 and/or RPC 1.8. The Committee doubts that a standard form could satisfy the obligation of "consultation and full disclosure of material facts" under RPC 1.7(b)(2), or full disclosure of transaction terms under RPC 1.8(a), for all cases. In any event, however, the proposed Disclosure and Authorization form that you have asked us to review lacks any meaningful information concerning your obligations to and compensation from the real estate business with which you are associated. Thus, while the Committee ordinarily would not be in a position to evaluate whether a particular disclosure satisfies these rules, the absence of plainly material facts from the form makes it evident that the form does not "fully disclose", in writing, the terms of the transaction as required by RPC 1.8(a)(1), or the material facts as required by RPC 1.7(b)(2).

Third, the form authorizes you to accept a referral fee from the real estate office. Your letter indicates that this is intended to address "acceptance of payment from a third party source." It is not clear to the Committee what you mean by this. RPC 1.8(f), which addresses compensation by third parties, applies where a third party compensates the lawyer for legal representation of a client. We understand the compensation that you receive from the real estate office to be compensation for the initial referral and subsequent activities undertaken as a real estate agent. However, if you are being compensated by the realty office for legal work for your clients, then you also must satisfy the remaining requirements of RPC 1.8(f).

Fourth, you indicate that you do not see solicitation as an issue because "the real estate services were offered to an existing client, not the reverse. (E.g., where I was acting as their real estate agent first and suggested they use my law office for legal services.)" This statement may reflect a misunderstanding of RPC 7.3(a). The rule prohibits certain types of in-person and telephone solicitation of prospective legal clients by a lawyer, unless the lawyer has a family or prior professional relationship with the prospective client, and the "prior professional relationship" to which the rule refers is a prior attorney-client relationship. Thus, the exception from RPC 7.3(a) is not satisfied simply because the prospective legal client had a prior professional relationship with a lawyer who was acting in a capacity other than that of a lawyer, such as a real estate agent. The prohibition on in-person and telephone solicitation would continue to apply.

Finally, nothing in this opinion addresses your ethical or legal obligations as a real estate agent, and nothing in it is intended to suggest that your proposed course of action would be consistent with those obligations.

[Ed. note - the following is in response to several additional questions from the inquirer after receiving the above opinion.]

The inquiring lawyer originally asked several questions concerning ethical constraints in serving clients as a lawyer and a real estate agent. The Committee responded to the lawyer's inquiry with Unpublished Informal Ethics Opinion 2025. The lawyer now poses three follow-up questions. First, the inquiring lawyer questions the Committee's conclusion that his successful referral of legal clients to a real estate brokerage with which he is associated amounts to entering into a "business relationship" with the client so as to trigger RPC 1.8.
Second, assuming RPC 1.8 applies, the inquiring lawyer asks whether he would violate the rule by failing to suggest independent review of the transaction. Third, the lawyer asks whether the informal opinion was meant to suggest that RPC 7.3(a) governs his solicitation of existing legal clients to use the services of the real estate office with which he is associated.

The Committee understands the inquirer’s recent correspondence to ask the following three questions as matters of follow-up to Unpublished Informal Ethics Opinion 2025.

(1) Why does the lawyer’s successful referral of clients to a real estate office with which the lawyer is associated as a real estate agent constitute entering into a business transaction with the client for purposes of RPC 1.8?

Under the circumstances of the initial inquiry, the lawyer has referred legal clients to a real estate office with which the lawyer is associated, to provide services in which the lawyer may participate and from which the lawyer stands to benefit economically. For these reasons, the referral constitutes entering into a business relationship with the client for purposes of RPC 1.8.

(2) Does the lawyer violate RPC 1.8 if the lawyer does not recommend independent legal review of this business transaction between the lawyer and the client?

RPC 1.8(a)(2) requires a lawyer to advise the client of the opportunity to seek the advice of independent counsel with respect to the transaction and to give the client a reasonable opportunity to seek that advice. Implicit in this requirement is providing the client sufficient objective advice and direction to protect the client’s interests. Thus, it seems likely that in most, if not all circumstances, RPC 1.8 would require the lawyer to recommend independent legal review of the transaction. The lawyer’s duty of competent representation under RPC 1.1 also likely would compel the lawyer to recommend such independent review.

(3) Would RPC 7.3(a) govern the lawyer’s solicitation of an existing legal client to enter into a business transaction with the lawyer’s real estate office?

No. RPC 7.3(a) does not govern a lawyer’s solicitation of an existing legal client.

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The Committee received an inquiry concerning a lawyer’s rights and duties to withdraw from representation in the context of representing clients in immigration matters. To facilitate a comprehensive analysis, the Committee modified the inquiry to the following:

It is standard practice in most offices for the lawyer to set deadlines for immigration clients for the return of information necessary to properly complete forms and supporting documents. The lawyer is unable to complete the forms and gather supporting documents without the client’s assistance. If the lawyer does not comply with the Immigration Court’s deadline, then the lawyer risks discipline by the Immigration Judge (who has the authority to file a formal complaint with EOIR against the lawyer).

In other situations, an immigration client has failed to pay the lawyer, but has not formally discharged the lawyer or responded to the lawyer’s demands for payment.

In these circumstances:

1. When a client refuses to communicate with the lawyer sufficiently to permit effective representation, may the lawyer withdraw from representation, and is the lawyer required to withdraw?

2. When a client fails to respond to the lawyer’s demand for payments due for past services, may the lawyer withdraw from representation?

3. In supporting a motion to withdraw, may a lawyer disclose to the court that the basis for the lawyer’s motion is the client’s failure to respond to requests for information or supporting documents, failure to pay fees for past services, or the lawyer’s inability to locate the client?

4. When a client discharges a lawyer but is subsequently arrested during the period that the lawyer’s withdrawal motion is pending, what are the lawyer’s ethical obligations with respect to the client’s post-discharge arrest?

5. What are a lawyer’s ethical obligations if a judge delays ruling on a withdrawal motion or denies the motion?

Analysis

1. When a client refuses to communicate with the lawyer sufficiently to permit effective representation, may the lawyer withdraw from representation, and is the lawyer required to withdraw?

Permissive withdrawal
When a client refuses to communicate with a lawyer sufficiently to permit effective representation, the lawyer is permitted to withdraw after making reasonable efforts to locate and communicate with the client. RPC 1.16(b)(5) allows withdrawal when a client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and the client has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled. The client's disappearance or failure to communicate with the lawyer constitutes a failure to fulfill an obligation to the lawyer, and is therefore appropriate grounds for the lawyer's withdrawal. See Advisory Opinions 1796, 1873.

In addition, under RPC 1.16(b)(6), a lawyer may withdraw if representation has been rendered unreasonably difficult by the client. The client's disappearance and failure to communicate, in circumstances in which the lawyer needs to be in contact with the client to represent that client effectively, constitutes alternative grounds for withdrawal. See Advisory Opinions 1796, 1873.

Mandatory withdrawal
A lawyer must withdraw if either discharged by the client (RPC 1.16(a)(3)) or continued representation will result in violation of the Rules of Professional Conduct or other law (RPC 1.16(a)(1)). The determination of whether an attorney-client relationship has concluded on a particular matter is generally an issue of fact that is determined using common law standards rather than the RPCs. See Hipple v. McFadden, 161 Wn.App. 550, 558-59, 255 P.3d 730 (2011). Termination of an attorney-client relationship may be implied from the circumstances. Id. at 559. Under the test announced in Hipple, an attorney-client relationship on a particular matter is generally considered concluded when "the client has no reasonable expectation of continued representation." Id. at 559.

RCW Chapter 2.44 governs attorney authority and generally requires an attorney to have client authority to proceed with a representation. If a client has disappeared or fails to communicate despite the lawyer's reasonable efforts to locate and communicate with the client, then, depending on the particular circumstances involved, the lawyer may reasonably conclude that the lawyer no longer has the requisite authority to proceed on behalf of the client under RCW Chapter 2.44 and that mandatory withdraw is triggered under RPC 1.16(a)(1). If so, the lawyer would still need to comply with any court requirements for seeking withdrawal in accord with RPC 1.16(c).

2. When a client fails to respond to the lawyer's demand for payments due for past services, may the lawyer withdraw from representation?

Yes, the lawyer may withdraw if a client has failed to pay for services after the lawyer has given reasonable warning that the lawyer will withdraw absent payment. In those circumstances, the client's failure to pay would constitute the client's failure to fulfill an obligation to the lawyer under RPC 1.16(b)(5). See RPC 1.16, Comment [8]. Withdrawal is also permitted under RPC 1.16(b)(6) if the client's failure to pay would make continued representation an unreasonable financial burden on the lawyer.

3. In supporting a motion to withdraw, may a lawyer disclose to the court that the basis for the lawyer's motion is the client's failure to respond to requests for information or supporting documents, failure to pay fees for past services, or the lawyer's inability to locate the client?

A lawyer's duty of confidentiality under RPC 1.6 remains in effect when seeking a court's permission to withdraw. Even if information in the lawyer's possession would support withdrawal and is necessary to provide a full explanation, the lawyer may not disclose that information if it is protected by RPC 1.6.
Although RPC 1.6 does not prohibit a lawyer from providing notice of withdrawal (RPC 1.6, Comment [25]), lawyers are cautioned that confidentiality obligations are broad, and apply "not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." RPC 1.6, Comment [3]. The duty of confidentiality remains in effect after the lawyer-client relationship ends (RPC 1.6, Comment [18]), so even when the lawyer is seeking to withdraw based on actual or constructive discharge, the lawyer may not disclose information that is subject to RPC 1.6 protections to the tribunal.

The comments to the RPCs recognize the tension between confidentiality obligations and the practical necessity to provide the court with an adequate explanation for the basis for withdrawal: "The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient." RPC 1.16, Comment [3]. Thus, the rules anticipate a framework in which the court will render a decision, even if the lawyer has provided only a limited factual background. If the court deems it necessary to have additional information, then the court may order the lawyer to disclose that information, and the lawyer may then disclose under RPC 1.6(a)(6) (a lawyer "may reveal information relating to the representation of a client to comply with a court order"). Even then, however, the lawyer should limit disclosure to the extent reasonably possible. As Comment [14] to RPC 1.6 provides, "a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable."

4. When a client discharges a lawyer but is subsequently arrested during the period that the lawyer's withdrawal motion is pending, what are the lawyer's ethical obligations with respect to the client's post-discharge arrest?

The client's discharge of the lawyer typically terminates the lawyer's right and obligation to speak or take any actions on the client's behalf, even for the purpose of furthering the client's perceived interests. RPC 1.16(a)(3); see also Advisory Opinion 954 (lawyer's inability to reach the client precludes the lawyer from taking any further action on the client's behalf); Advisory Opinion 1527 (lawyer's withdrawal precludes the lawyer from signing court order, even though the lawyer's representation was still in effect at the time of the underlying hearing); Advisory Opinion 1873 (when the client has disappeared, the lawyer may not settle the client's claim without specific authority from the client).

Here, the lawyer has been discharged by the client, but the lawyer's withdrawal motion has not yet been granted by the court. With respect to the underlying action, the lawyer must continue to represent the client until the court has granted the withdrawal motion, subject to the limitations on representation in light of that discharge (see further analysis below). If the arrest is on an unrelated matter, then even if that arrest would affect the matter in which the withdrawal motion is pending, the lawyer has no right or obligation to take further action absent a new engagement.

5. What are a lawyer's ethical obligations if a judge delays ruling on a withdrawal motion or denies the motion?

If a lawyer has moved to withdraw, the lawyer must continue to serve until the court grants
that motion. Even when proper grounds for withdrawal exist, a lawyer must continue representation if ordered to do so by a tribunal. RPC 1.16(c); see also Advisory Opinion 1169; RPC 1.2(f) (prohibiting a lawyer from acting on behalf of a person or organization without authority “unless the lawyer is authorized or required to so act by law or a court order”; Comment [17] to that rule explicitly identifies a court’s denial of a withdrawal motion under RPC 1.16(c) as grounds for a lawyer to continue acting on behalf of a client, even absent client authority).

Continued representation while a withdraw motion is pending presents obvious pitfalls, particularly if the client’s disappearance or refusal to communicate is the basis for withdrawal. Although a lawyer ordinarily may not take action without his or her client’s direction and consent, he or she may be faced with the necessity to take action or make decisions, despite the absence of the client, if a court delays ruling on a withdrawal motion or denies the motion. In that event (and, in the case of a pending withdrawal motion, after diligently pursuing a ruling from the court), while the lawyer may not substitute his or her own objectives, the lawyer must continue representation consistent with the known objectives of the client. See RPC 1.2(a) and Comment [3] (“At the outset of a representation, the client may authorize the lawyer to take specific action on the client’s behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization”).

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2015 Disciplinary Statistics
STRUCTURE OF THE WSBA LAWYER DISCIPLINE AND DISABILITY SYSTEM

The Washington Supreme Court has exclusive responsibility and inherent authority over regulation of the practice of law in Washington. This authority includes administering the discipline and disability system. Many of the Court's disciplinary functions are delegated by court rule to the WSBA, which acts under the supervision and authority of the Court. Consistent with the Supreme Court's mandate in General Rule 12.1, the WSBA administers an effective system of discipline in order to fulfill its obligations to protect the public and ensure the integrity of the profession. The WSBA's lawyer discipline functions are discharged primarily through the Office of Disciplinary Counsel (ODC), the Disciplinary Board, and hearing officers as described below.

SUPREME COURT
- Has exclusive responsibility to administer the discipline and disability system
- Conducts final appellate review of disciplinary and disability proceedings
- Orders all suspensions and disbarments, interim suspensions, and reciprocal discipline

DISCIPLINARY BOARD
- Reviews recommendations for disciplinary action, disability proceedings, and reviews dismissal through its review committees
- Serves as intermediate appellate body
- Reviews hearing records and stipulations

HEARING OFFICERS
- Conduct evidentiary hearings and other proceedings
- Conduct settlement conferences
- Approve stipulations to admonition and reprimand

OFFICE OF DISCIPLINARY COUNSEL
- Receives, reviews, and may investigate grievances
- Recommends disciplinary action or dismissal
- Diverts grievances involving less serious misconduct
- Recommends disability proceedings
- Presents cases to discipline-system adjudicators

Annually, the Washington State Bar Association publishes a report on Washington's discipline system. The report summarizes the activities of the system's constituents, including the Office of Disciplinary Counsel (ODC), the Disciplinary Board, hearing officers, and the Lawyers' Fund for Client Protection. The report also provides statistical information about lawyer discipline and discipline for limited licenses in Washington for the calendar year. These pages provide an informal overview of the 2015 Discipline System Annual Report, which is now available on the WSBA website.

Number and Nature of 2015 Grievances
ODC's intake staff receives all phone inquiries and written grievances and conducts the initial review of every grievance. After initial review, some grievances are dismissed and others are referred for further investigation by ODC investigation/prosecution staff. Grievances that are not dismissed or diverted after investigation may be referred for disciplinary action. When warranted and authorized by a review committee of the Disciplinary Board, these matters are prosecuted by disciplinary counsel with the assistance of professional investigators and a support staff of paralegals and administrative assistants. In 2015, ODC received more than 2,000 grievances.

DISCIPLINARY GRIEVANCES, MEDIATED MATTERS, AND CONSUMER AFFAIRS CONTACTS IN 2015

| Discipline Grievances Received | 2,081 |
| Disciplinary Grievances Resolved | 2,180 |
| Non-Communication Matters Mediated | 102 |
| File Disputes Mediated | 59 |
| Consumer Affairs Phone Calls, Emails, and Interviews | 6,485 |

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In 2015, the most common grievance allegations against Washington lawyers related to unsatisfactory performance, personal behavior concerns, and interference with the administration of justice.

In 2015, the majority of grievances against Washington lawyers originated from current and former clients and opposing clients. Discipline files are opened in the name of the Office of Disciplinary Counsel when potential ethical misconduct comes to the attention of disciplinary counsel by means other than the submission of a grievance. Most grievances arise from criminal law, family law, and tort matters.
Disciplinary Actions

Disciplinary "actions" include both public disciplinary "sanctions" and admonitions. Disciplinary sanctions are, in order of increasing severity, reprimands, suspensions, and disbarments. In Washington, admonitions are also a form of public discipline. Review committees of the Disciplinary Board also have authority to issue advisory letters if a lawyer should be cautioned. An advisory letter is neither a sanction nor a disciplinary action and is not public information. For less serious misconduct, ODC may divert a grievance from discipline if a lawyer agrees to a diversion contract, which if successfully completed results in dismissal of the grievance. In 2015, 28 matters were referred to diversion.

In 2015, 74 lawyers were disciplined. The chart below tracks the number of disciplinary actions imposed over the last five reporting years.

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Lawyer Disability Matters
Special procedures apply when there is cause to believe that a lawyer is incapable of properly defending a disciplinary proceeding, or incapable of practicing law, because of mental or physical incapacity. Such matters are handled under a distinct set of procedural rules. In some cases, the respondent lawyer must have counsel appointed at the WSBA’s expense. In disability cases, a determination that the respondent lawyer does not have the capacity to practice law results in a transfer to disability inactive status. In recent years, the number of transfers to disability inactive status has increased. In 2015, nine lawyers were transferred to disability inactive status based on incapacity to practice law.

Limited Licenses and the Discipline System
The Washington Supreme Court regulates two licenses authorizing the limited practice of law: limited practice officers (LPOs) and limited license legal technicians (legal technicians). A Washington Supreme Court-mandated regulatory board oversees each limited license. Each licensee is subject to license-specific admission and practice rules, rules of professional conduct, and disciplinary procedural rules. The WSBA administers a discipline system for each of these licenses. At the end of 2015, there were 768 LPOs and nine legal technicians actively licensed to practice. In 2015, the WSBA received three disciplinary grievances against LPOs and one disciplinary action was imposed. In 2015, the Supreme Court licensed the first legal technicians, and the WSBA did not receive any grievances.

Resources
Supporting Women Lawyers

Thank you for featuring Linda Fang’s thoughtful and highly personal article “Keeping Women in the Profession” on the cover of the April/May issue, and highlighting many of the challenges faced by women and mothers who practice law. We write to share some resources available to all who seek to improve the retention of women attorneys in Washington.

We are fortunate to have two strong organizations in our state that provide guidance and tools to help support women lawyers, and are committed to the success of women in the law: Washington Women Lawyers (www.ww1.org) and the Mother Attorneys Mentoring Association of Seattle (www.mamaseattle.org).

Both of these nonprofit groups offer an array of regular meetings, CLEs, panel discussions, cocktail hours and lunch seminars, all of which provide a platform for women lawyers to connect with each other — and male colleagues of the bar — for networking, mentoring, training, referring business, and brainstorming.

WWL’s eleven chapters throughout the state host regular gatherings, so women attorneys can develop relationships with other practitioners in their regions. MAMA Seattle offers monthly “kid-friendly” networking events on weekends, so parents can combine family fun time with business/client relationship building. With the advent of websites, social media, online platforms such as LinkedIn, and a list serve hosted on the BigTent.com platform, women attorneys from across the state can share insights, post and answer questions (anonymously, if desired), exchange referrals, and create solutions to commonly experienced challenges.

Frequent topics of discussion, online and at meetings, include practical guidance and strategies to help women get career building assignments to high profile matters, understand compensation models and law firm economics to make more effective and strategic choices, build their own books of business, and uncover and counteract pernicious pay inequality and bias. WWL and MAMA Seattle members also share information on parental leave policies and the importance of finding and nurturing “champions” who will actively promote women attorneys to their clients, supervising attorneys and firm management.

Some of our strongest supporters are male colleagues who strive for fulfilling, engaging, and durable careers and manageable work/life/family balance, as well as law firm leaders of both genders who see the significant financial cost of losing women attorneys after years of investment in their growth and development.

We encourage all members of the bar to attend WWL or MAMA Seattle events, to consider what law firm or department policies and procedures might need to change to help correct imbalances, and to consider how to promote, encourage, train, and retain the women lawyers in your midst. We are all needed to serve the people of our state.

Robin A. Schachter, MAMA Seattle
Shannon Lawless, Washington Women Lawyers

CORRECTIONS

“Annual WSBA Discipline Report Snap- shot” (JUN 2016 NWLawyer): The Annual Report inadvertently underreported Files Closed in Intake when the report was initially published. In June 2016, the figure was amended to 1,302, representing all files closed in intake during 2015.

In the OnBoard article in the JUN 2016 NWLawyer, the photograph related to Local Hero Award recipient Michael Young pictured his nominator, attorney Brian Considine.