

WSR 23-13-067
RULES OF COURT
STATE SUPREME COURT
[June 8, 2023]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENTS TO ) NO. 25700-A-1524
RPC 1.5—FEES; RPC 5.4— )
PROFESSIONAL INDEPENDENCE )
OF A LAWYER; AND RPC 7.3— )
SOLICITATION OF CLIENTS )

The Washington State Bar Association's Committee on Professional Ethics, having recommended the suggested amendments to RPC 1.5—Fees; RPC 5.4—Professional Independence of a Lawyer; and RPC 7.3—Solicitation of Clients, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2024.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2024. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 8th day of June, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

EXHIBIT A
SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT
TITLE 7 - INFORMATION ABOUT LEGAL SERVICES

RPC 7.3 SOLICITATION OF CLIENTS

(a) A lawyer may solicit professional employment unless:

- (1) the solicitation is false or misleading;
(2) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;
(3) the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
(4) the solicitation involves coercion, duress, or harassment.

(b) A lawyer shall not compensate, or give or promise anything of value to, a person who is not an employee or lawyer in the same law firm for the purpose of recommending or securing the services of the lawyer or law firm, except that a lawyer may:

- (1) pay the reasonable cost of advertisements or communications permitted by RPC 7.1, including online group advertising;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service and share a fee with a not-for-profit lawyer referral service that qualifies under Section 501 of the Internal Revenue Code or Washington's Nonprofit Corporation Act, or is a program sponsored by a non-profit organization or a court as authorized under Rule 6.5(a);

(3) pay for a law practice in accordance with RPC 1.17;

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

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

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

(5) give nominal gifts that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(c) [Reserved.]

(d) [Reserved.]

#### **Additional Washington Comments (10-16)**

[15] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A "legal service plan" is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A "lawyer referral service," on the other hand, is any individual or entity that operates for the direct or indirect purpose of referring potential clients to lawyers, regardless of whether the term "referral service" is used. The "usual charges" of a legal service plan or not-for-profit lawyer referral service are fees that are openly promulgated and uniformly applied. Not-for-profit lawyer referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. A lawyer also may share a percentage of a fee in exchange for a referral from not-for-profit lawyer referral services, because these services help to facilitate access to justice and, if they operate under Section 501 of the Internal Revenue Code or the Washington Nonprofit Corporation Act, the service will use the fee only to defray reasonable operating costs. The fee paid by a client who is referred by the service, however, should not exceed the total charges that the client would have paid if the lawyer referral was not involved.

#### **EXHIBIT B**

#### **SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT**

#### **TITLE 5 - LAW FIRMS AND ASSOCIATIONS**

#### **RPC 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER**

#### **Additional Washington Comment (~~3-4~~ 3-5)**

[3] Paragraph (a) (5) was taken from former Washington RPC 5.4 (a) (2).

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

[5] For circumstances when a lawyer can share a fee with a not-for-profit lawyer referral service, see Rule 7.3 (b) (2) and Comment 15.

EXHIBIT C

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

TITLE 1 - CLIENT LAWYER RELATIONSHIP

RPC 1.5 FEES

(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 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.

(2) ~~the division is between the lawyer and a duly authorized lawyer referral service of either the Washington State Bar Association or one of the county bar associates of this state.~~ The division of fees is allowed by RPC 7.3 (b) (2).