

WSR 21-13-054
RULES OF COURT
STATE SUPREME COURT
[June 4, 2021]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1346
RPC 1.13—ORGANIZATION AS)
CLIENT, CMT. [4] AND RPC 1.16—)
DECLINING OR TERMINATING)
REPRESENTATION, NEW)
WASHINGTON CMT. [16])

The Washington State Bar Association Board of Governors, having recommended the adoption of the suggested amendments to RPC 1.13—Organization as Client, cmt. [4] and RPC 1.16—Declining or Terminating Representation, new Washington cmt. [16], and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j)(1), the suggested amendments will be published in the Washington Reports and will become effective September 1, 2021.

DATED at Olympia, Washington this 4th day of June, 2021.

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Montoya-Lewis, J.
Whitener, J.

GR 9 COVER SHEET

Suggested Amendments to

THE RULES OF PROFESSIONAL CONDUCT (RPC)

Rule 1.16, Comment [4] and Rule 1.13 Additional Washington Comment [16] Submitted by the Board of Governors of the Washington State Bar Association

A. Name of Proponent: Washington State Bar Association

B. Spokespersons:

Rajeev Majumdar, President, Washington State Bar Association
Jeanne Marie Clavere, Professional Responsibility Counsel, Washington State Bar Association

C. Purpose:

The purpose of the suggested amendments are to alert lawyers to consult the holding of a recent decision of the Washington State Supreme Court, Karstetter v. King County Corrections Guild, 193 Wn.2d 672, 444 P.2d 1185 (2019). RPC 1.16 (a)(3) provides that "a lawyer shall not represent a client ... if ... the lawyer is discharged." Current comment [4] to the rule provides that "A client may discharge a lawyer at any time, with or without cause, subject to liability for the lawyer's services." On its face, the Rule and comment suggest that any lawyer may be fired by a client without any recourse by the lawyer except for fees already earned.

In *Karstetter*, the Court held that lawyers employed as in-house counsel and lawyers with comparable employment relationships face unique employment expectations. Accordingly, the Court held that such lawyers may retain the ability to bring contract and wrongful discharge actions if those actions can be brought without damaging the integrity of the client-lawyer relationship.

The suggested amendments are intended to alert lawyers consulting the RPCs to this decision in two places. First, RPC 1.16 is directly impacted by the *Karstetter* decision. The suggested amendment adds additional language to Comment [4] pointing lawyers consulting the rule to the *Karstetter* decision. The new language of Comment [4], which would be a Washington revision, would read as follows: "However, the rule may apply differently with respect to in-house lawyers and lawyers with comparable employment situations. See *Karstetter v. King County Corrections Guild*, 193 Wn.2d 672, 444 P.3d 1185 (2019)."

Second, RPC 1.13 is focused on the responsibilities of lawyers for entities. As such, it would be appropriate to also add a reference to *Karstetter* in the comments to that rule. The amendment would add an "Additional Washington Comment [16]" at the end of the RPC 1.13 comments, which would read as follows: "In-house lawyers and lawyers with comparable employment situations may face unique employment expectations that impact their rights if discharged by the client. See *Karstetter v. King County Corrections Guild*, 193 Wn.2d 672, 444 P.3d 1185 (2019); Comment [4] to Rule 1.16."

RPC 1.13

ORGANIZATION AS CLIENT

(a)-(h) [Unchanged.]

Comment

[1]-[14] [Unchanged.]

Additional Washington Comments [15-16]

[15] Unchanged.

[16] In-house lawyers and lawyers with comparable employment situations may face unique employment expectations that impact their rights if discharged by the client. See *Karstetter v. King County Corrections Guild*, 193 Wn.2d 672, 444 P.3d 1185 (2019); Comment [4] to Rule 1.16.

RPC 1.16

DECLINING OR TERMINATING REPRESENTATION

(a)-(d) [Unchanged.]

Comment

[1]-[3] [Unchanged.]

Discharge

[4] [**Washington revision**] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. However, the rule may apply differently with respect to in-house lawyers and lawyers with comparable employment situations. See *Karstetter v. King County Corrections Guild*, 193 Wn.2d. 672, 444 P.3d 1185 (2019); Washington Comment [16] to Rule 1.13. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5]-[9] [Unchanged.]