

WSR 25-09-113
RULES OF COURT
STATE SUPREME COURT
[April 2, 2025]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENT TO RPC) NO. 25700-A-1625
1.5—FEES, COMMENT [6])

The Washington State Bar Association, having recommended the suggested amendment to RPC 1.5—Fees, Comment [6], and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as shown below is 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 2026.

(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, 2026. 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 2nd day of April, 2025.

For the Court

Stephens, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendment
RULES OF PROFESSIONAL CONDUCT (RPC)
Rule 1.5, Comment [6]

Submitted by the Washington State Bar Association

A. Name of Proponent:

Washington State Bar Association

B. Spokesperson:

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C. Purpose: This suggested revision to the Rules of Professional Conduct is meant to clarify that contingent fees are inappropriate in disputes regarding domestic relations matters, including property and parenting actions after dissolution of domestic partnerships or com-

mitted intimate relationships and establishment or maintenance of a guardianship of a minor.

D. Hearing: A hearing is not requested.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Material:

- Appendix A: General Background

APPENDIX A TO GR 9 COVER SHEET: GENERAL BACKGROUND

RPC 1.5(d) provides, in part: "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 ..."

Comment [6] [Washington Revision] currently states, in part:

"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."

The rationale for RPC 1.5(d) is provided in the Annotated Model Rules of Professional Conduct, p. 116 of the 10th edition, which states that the purpose of prohibiting contingency fee arrangements in domestic relations matters is to protect "against overreaching in highly emotional situations and [reflecting] a policy of promoting reconciliation."

The legislature established domestic partnerships (DPs) for same-sex couples when it enacted chapter 156, Laws of 2007 (codified at Chap. 26.60 RCW). When Chapter 3, Laws of 2012, established same-sex marriage in Washington, the domestic partnership law was revised to cover only persons of 62 years or older. The legislature intended that domestic partners should "for all purposes ... be treated the same as married spouses." RCW 26.60.015. The legislature found in 2012 that DPs should remain an option when one or both of the partners was 62 years or older because, while "couples are entitled to marry under the state's marriage statutes, some social security and pension laws nevertheless make it impractical for these couples to marry." RCW 26.60.010.

Recognized in caselaw, Committed Intimate Relationships (CIRs) are recognized in a series of Washington court decisions that treated unmarried couples like married persons for property division and other purposes, based on a number of factors, including continuity of cohabitation; duration of the relationship; purpose of the relationship, pooling of resources and services for joint projects; and intent of the parties. See, e.g., *Connell v. Francisco*, 127 Wn.2d 339, 346, 898 P.2d 831 (1995); *In re Pennington*, 142 Wn.2d 592, 14 P.3d 764 (2000). The facts involved in each relationship are different, and courts ultimately must weigh the factors to determine whether a CIR existed and, if so, how property should be divided. Sometimes CIRs are labeled "equity relationships."

Advisory Opinion 1900, issued in 2000, concluded that RPC 1.5(d) did not prohibit a lawyer's use of a contingent fee arrangement in a dispute concerning the division of property acquired by parties who were not married and who had not been married during the time the property was acquired. AO 1900 was written before the enactment of Washington's DP statute in 2007 and did not consider the Washington courts' development of the legal concept of CIRs. The Washington State Bar Association's Committee on Professional Ethics has withdrawn AO

1900 because it did not take Domestic Partnerships and CIRs into account.

The Board of Governors recommends that the State Supreme Court adopt an amendment to RPC 1.5 Comment [6] clarifying that contingent fees are inappropriate in connection with a broader range of domestic relations matters, including parenting issues, the dissolution of DPs, or the dissolution of CIRs (including instances where one party asserts that a CIR has existed).

SUGGESTED AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT
RULE 1.5, COMMENT [6]

RPC 1.5 FEES

[a]-[f] [Unchanged.]

Comment

[1]-[5] [Unchanged.]

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. Paragraph (d) is equally applicable to fees in other domestic relations matters, including (1) resolution of parenting issues, (2) establishment or maintenance of a guardianship of a minor, (3) dissolving a state-registered domestic partnership, and (4) ending a committed intimate relationship under Washington law. 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.

[7]-[9] [Unchanged.]

Additional Washington Comments (10-19)

[10]-[19] [Unchanged.]