FILED SUPREME COURT STATE OF WASHINGTON October 5, 2021 BY ERIN L. LENNON CLERK

THE SUPREME COURT OF WASHINGTON

)

)

)

)

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO RPC 1.6— CONFIDENTIALITY OF INFORMATION

O R D E R

NO. 25700-A-1371

The Washington State Bar Association Board of Governors, having recommended the adoption of the suggested amendments to RPC 1.6—Confidentiality of Information, 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 attached hereto are adopted.

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

Page 2 ORDER IN THE MATTER OF THE SUGGESTED AMENDMENTS TO RPC 1.6-CONFIDENTIALITY OF INFORMATION

DATED at Olympia, Washington this 5th day of October, 2021.

nzález González, C.J

Johnson, J

Madsen, J.

Owe

Stephens, J.

Gordon McCloud, J.

Yu

Montoya-Lewis,

Whitener, J.

1	GR 9 COVER SHEET
2	
3	Suggested Amendments to
4	RULES OF PROFESSIONAL CONDUCT (RPC)
5	Rule 1.6
6	
7	A. <u>Proponent</u> : Washington State Bar Association, Board of Governors, Committee on Professional Ethics
8	P. Snakonargana
9	B. <u>Spokepersons</u> :
10	Kyle Sciuchetti, President, Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539
11	
12	Terra Nevitt, Executive Director, Washington State Bar Association, 1325 4 th Avenue, Suite 600, Seattle, WA 98101-2539
13 14	Jeanne Marie Clavere, Professional Responsibility Counsel, Washington State Bar Association, 1325 4 th Avenue, Suite 600, Seattle, WA 98101-2539
15 16	C. <u>Purpose</u>: Update cross references in Comments [15] and [17] to RPC 1.6.
17	Specifically:
18	Revise the last sentence of Comment [15]: "See also Washington Comment [24][26]
19	 [24][26]. Revise the last sentence of Comment [17]: "See also Washington Comment
20	[23][<u>25]</u>.
21	
22	In 2016, the Court adopted several amendments to the Washington RPC to
23	incorporate changes made by the ABA to the Model Rules of Professional
24	Conduct at the recommendation of the ABA Commission on Ethics 20/20. One
25	amendment adopted current subsection (7) to RPC 1.6(b). This subsection
26	provides:

1	
2	(b) A lawyer to the extent the lawyer reasonably believes necessary:
3	
4	* * *
5	(7) may reveal information relating to the representation of a client to
6	detect and resolve conflicts of interest arising from the lawyer's change of
7	employment or from changes in the composition or ownership of a firm,
8	but only if the revealed information would not compromise the attorney-
9	client privilege or otherwise prejudice the client.
10	
11	Related to this amendment, current Comments [13] and [14] were adopted to
12	provide guidance concerning the new rule. As a result, prior Comments [13]
13	through [26] were renumbered to become Comments [15] through [28].
14	However, the references in current Comments [15] and [17] to renumbered
15	Washington comments were not updated at that time.
16	D. <u>Hearing</u>: A hearing is not requested.
17	
18	E. Expedited Consideration: Expedited consideration is not requested.
19	F. Supporting Material:
20	 Exhibit A shows the relevant comments as they existed prior to
21	September 1, 2016.
22	• Exhibit B shows the relevant comments as of September 1, 2016,
23	following adoption of the amendments.
24	 Exhibit C shows the comments with proposed redline revisions to the
25	current Comments [15] and [17] with the numbering changed in the last sentence.
26	

SUGGESTED AMENDMENTS TO RPC 1.6 CONFIDENTIALITY OF INFORMATION

(a) - (c) Unchanged.

[15] **[Washington revision**] A lawyer may be ordered to reveal information relating to the representation of a client by a court. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order. See also Washington Comment [24] [26].

Comment [16] Unchanged.

[17] [Washington revision] Paragraphs (b)(2) through (b)(7) permit but do not require the disclosure of information relating to a client's representation to accomplish the purposes specified in those paragraphs. In exercising the discretion conferred by those paragraphs, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 3.3, 4.1(b), and 8.1. See also Rule 1.13(c), which permits disclosure in some circumstances whether or not Rule 1.6 permits the disclosure. See also Washington Comment [23] [25].

Comments [18]-[22] Unchanged.

Comments [1]-[14] Unchanged.

1 [23] [Reserved.]

2 [24] [Reserved.]

[25] The exceptions to the general rule prohibiting unauthorized disclosure of information
relating to the representation "should not be carelessly invoked." In re Boelter, 139 Wn.2d
81, 91, 985 P.2d 328 (1999). A lawyer must make every effort practicable to avoid
unnecessary disclosure of information relating to a representation, to limit disclosure to those
having the need to know it, and to obtain protective orders or make other arrangements
minimizing the risk of avoidable disclosure.

9 [26] Washington has not adopted that portion of Model Rule 1.6(b)(6) permitting a lawyer 10 to reveal information related to the representation to comply with "other law." Washington's 11 omission of this phrase arises from a concern that it would authorize the lawyer to decide 12 whether a disclosure is required by "other law," even though the right to confidentiality and 13 the right to waive confidentiality belong to the client. The decision to waive confidentiality 14 should only be made by a fully informed client after consultation with the client's lawyer or 15 by a court of competent jurisdiction. Limiting the exception to compliance with a court order 16 protects the client's interest in maintaining confidentiality while insuring that any 17 determination about the legal necessity of revealing confidential information will be made 18 by a court. It is the need for a judicial resolution of such issues that necessitates the omission 19 of "other law" from this Rule.

0 Comments [27] – [28] Unchanged.

26