

THE SUPREME COURT OF WASHINGTON

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

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ORDER

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.

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ORDER
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CONFIDENTIALITY OF INFORMATION

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



Johnson, J.



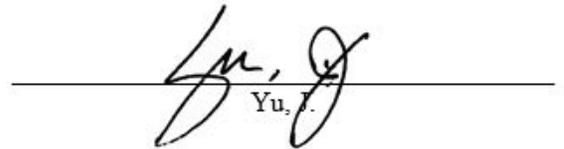
González, C.J.



Gordon McCloud, J.



Madsen, J.



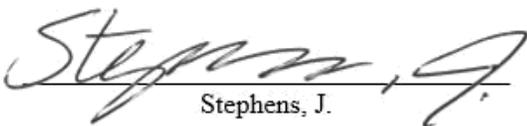
Yu, J.



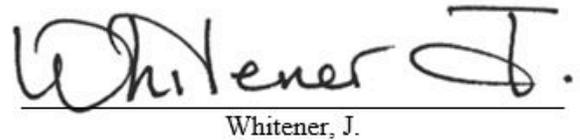
Owens, J.



Montoya-Lewis, J.



Stephens, J.



Whitener, J.

1 **GR 9 COVER SHEET**

2
3 **Suggested Amendments to**
4 **RULES OF PROFESSIONAL CONDUCT (RPC)**

5 **Rule 1.6**

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7 **A. Proponent:** Washington State Bar Association, Board of Governors, Committee
8 on Professional Ethics

9 **B. Spokepersons:**

10 Kyle Sciuchetti, President, Washington State Bar Association, 1325 4th Avenue,
11 Suite 600, Seattle, WA 98101-2539

12 Terra Nevitt, Executive Director, Washington State Bar Association, 1325 4th
13 Avenue, Suite 600, Seattle, WA 98101-2539

14 Jeanne Marie Clavere, Professional Responsibility Counsel, Washington State
15 Bar Association, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539

16 **C. Purpose:** 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
19 [24][26].
20 • Revise the last sentence of Comment [17]: “See also Washington Comment
21 [23][25].

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:

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2 (b) A lawyer to the extent the lawyer reasonably believes necessary:

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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 Related to this amendment, current Comments [13] and [14] were adopted to
11 provide guidance concerning the new rule. As a result, prior Comments [13]
12 through [26] were renumbered to become Comments [15] through [28].
13 However, the references in current Comments [15] and [17] to renumbered
14 Washington comments were not updated at that time.

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16 **D. Hearing:** A hearing is not requested.

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18 **E. Expedited Consideration:** Expedited consideration is not requested.

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20 **F. Supporting Material:**

- 21 • Exhibit A shows the relevant comments as they existed prior to
22 September 1, 2016.
- 23 • Exhibit B shows the relevant comments as of September 1, 2016,
24 following adoption of the amendments.
- 25 • Exhibit C shows the comments with proposed redline revisions to the
26 current Comments [15] and [17] with the numbering changed in the last
sentence.

1 [23] [Reserved.]

2 [24] [Reserved.]

3 [25] The exceptions to the general rule prohibiting unauthorized disclosure of information
4 relating to the representation "should not be carelessly invoked." In re Boelter, 139 Wn.2d
5 81, 91, 985 P.2d 328 (1999). A lawyer must make every effort practicable to avoid
6 unnecessary disclosure of information relating to a representation, to limit disclosure to those
7 having the need to know it, and to obtain protective orders or make other arrangements
8 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.

20 **Comments** [27] – [28] Unchanged.

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