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**RPC 6.5:
A Practical Solution for Conflicts at Pro Bono Clinics**

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When the ABA Model Rules of Professional Conduct were being comprehensively reviewed two decades ago by the ABA “Ethics 2000” Commission, it noted a potential disincentive to *pro bono* service created by the conflict rules:

[S]trict application of the conflict-of-interest rules may be deterring lawyers from serving as volunteers in programs in which clients are provided short-term limited legal services under the auspices of a nonprofit organization or a court-annexed program. The paradigm is the legal-advice hotline or pro se clinic, the purpose of which is to provide short-term limited legal assistance to persons of limited means who otherwise would go unrepresented.¹

The solution the ABA Ethics 2000 Commission proposed—and the ABA House of Delegates adopted in 2002—was ABA Model Rule 6.5, which relaxes the conflict rules in the context of short-term advice clinics and their equivalents.² At the time the ABA was considering what became Model Rule 6.5, Washington was already developing amendments to the Rules of Professional Conduct and associated Superior Court Civil Rules to expand legal services available to clients of modest means.³ Washington’s separate, but in many ways parallel, work resulted in the adoption of Washington RPC 6.5 in 2002.⁴ Although the Washington rule was—and remains—somewhat different than its ABA

counterpart, it is also built around a relaxation of the conflict rules in the short-term *pro bono* advice clinic setting.⁵

In this column, we'll first briefly survey the history of the Washington rule for context. We'll then turn to its mechanics and conclude with its limitations.

History

When Washington was evaluating its own professional and civil rules in the early 2000s in an effort to expand legal services to people of modest means, the ABA had published a draft version of what became Model Rule 6.5.⁶ The Washington working group tailored its proposed RPC 6.5 around the then-draft ABA Model Rule with some modifications. One of the leaders in the Washington effort later recalled the central objective that the Washington proposal shared with the ABA draft:

The most crucial practical aspect of the rule is the relaxation of conflict-of-interest rules, unless the conflicts are actually known, for short-term limited scope representations under nonprofit and court-annexed legal programs. This in effect allows a lawyer working in a law firm to provide volunteer short-term limited scope services without concern of having imputed to him or her a conflict arising from some other attorney in the firm.⁷

Washington RPC 6.5 was adopted in 2002 along with several related amendments to the RPCs and the Civil Rules.⁸

Washington RPC 6.5 and its associated comments have since been amended several times—but the focus of the rule remains the same. The WSBA “Ethics 2003” Committee, which comprehensively reviewed the Washington RPCs in light of the changes adopted by the ABA Ethics 2000 process, suggested some modest amendments, but noted that “[t]he Committee concluded that there was no reason to revisit a rule change so recently approved and adopted by the Supreme Court.”⁹ The Ethics 2003 amendments were adopted by the Supreme Court in 2006.¹⁰ References to LLLTs were included in 2015.¹¹ Prospective notice of screening in the event of a conflict was added in 2021.¹²

Mechanics

RPC 6.5(a) predicates application of the rule on a lawyer providing short-term, limited legal services *pro bono* through a nonprofit or a court:

A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter and without expectation that the lawyer will receive a fee from the client for the services[.]

Comment 1 to RPC 6.5 underscores the text of the rule in addressing both the circumstances when it applies and the practical difficulty of doing full conflict checks in those situations:

Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer’s representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation.

RPC 6.5(a)(1) through (a)(3) relax conflict standards in this setting in three principal respects.

RPC 6.5(a)(1) applies the current, former and prospective client conflict rules only if a lawyer knows that the limited consultation would create a conflict. For example, a law firm lawyer could advise a renter at a *pro bono* night clinic on a landlord-tenant question if the lawyer did not know that the lawyer’s firm represented the landlord. “Knows” is a defined term under RPC 1.0A(f) and means actual knowledge, although actual knowledge may be inferred from the circumstances.¹³

RPC 6.5(a)(2) does not impute a volunteer lawyer's conflict to other law firm lawyers if they are not aware of the conflict. Under RPC 1.10(a), which is sometimes called "the firm unit rule," one law firm lawyer's conflict is generally imputed to all the lawyers at the firm. Therefore, the volunteer's landlord-tenant conflict in the preceding example would not be imputed to other lawyers at the same firm (assuming they are unaware of the conflict) and they could ordinarily continue to represent the landlord.¹⁴

RPC 6.5(a)(3) recognizes that there may be circumstances when opposing parties have consulted with the same legal services organization. It permits screening to address conflicts in this situation and allows an organization to provide notice of screening as a remedy for conflicts prospectively in, for example, a clinic intake form.¹⁵ The 2021 amendments permitting notice of screening to be given prospectively as a matter of routine were developed to protect victims of domestic violence from possible retaliation if the perpetrator had earlier sought limited advice from the same provider.¹⁶ In that circumstance, notice at the time a conflict arose would effectively tell the perpetrator that the victim was seeking legal assistance against the perpetrator. Prospective notice of screening, however, is not limited to that situation. Under RPC 6.5(c), though,

prospective notice is only available when the assistance to the respective clients “is limited legal service as governed by Rule 6.5.”

Limitations

There are four primary limitations with this model.

First, the model is limited by RPC 6.5(a) to clinics and similar short-term, limited advice equivalents under the auspices of a nonprofit or a court.

Second, Comment 2 to RPC 6.5 notes that the approach reflected in the rule is predicated on a limited scope representation and, as such, must comply with RPC 1.2(c).¹⁷ That rule permits a lawyer to limit the scope of a representation as long as the limitation is reasonable under the circumstances and the client gives informed consent.¹⁸ Although informed consent is not required to be confirmed in writing under RPC 1.2(c), prudent practice suggests memorializing client consent in writing in, for example, a clinic intake form.¹⁹

Third, if the lawyer’s work for the client goes beyond the short-term advice context on which the rule is predicted, Comment 5 to RPC 6.5 counsels that the conflict rules apply fully. For example, if a lawyer’s limited advice at a clinic transitioned into representation of the client in a lawsuit, the lawyer—and the lawyer’s firm—would need to run a complete conflict check and comply fully with the conflict rules.

Finally, Comment 2 notes that, except for the conflict rules, the balance of the RPCs apply—specifically including those relating to confidentiality. This recognizes that although the interaction with the clients involved is by definition “short-term,” attorney-client relationships are formed nonetheless, and our corresponding duties apply.

Summing Up

RPC 6.5 strikes a practical balance on conflicts that encourages lawyers to participate in *pro bono* clinics and similar venues serving clients who would not otherwise be able to afford legal assistance.

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¹ ABA, *A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-2013* at 728 (2013).

² *Id.* at 730. For a discussion of ABA Model Rule 6.5, see generally ABA, *Annotated Model Rules of Professional Conduct* at 661-64 (10th ed. 2023). Comment 6 to RPC 6.5 cautions that the Washington rule differs in some respects from the ABA Model Rule. Firms with offices in other states, therefore, should consult the analogous rule in those jurisdictions. A chart comparing state adoption to the Model Rules is available on the ABA Center for Professional Responsibility web site: https://www.americanbar.org/groups/professional_responsibility/.

³ See generally Barrie Althoff, *Ethical Issues Posed by Limited-Scope Representation—The Washington Experience*, ABA Professional Lawyer at 67 (Symposium Issue 2004) (describing Washington developments in the late 1990s and early 2000s).

⁴ *Id.* at 83-84.

⁵ *Id.*

⁶ *Id.* at 83.

⁷ *Id.* at 84.

⁸ *Id.* at 83-84.

⁹ WSBA, *Reporter's Explanatory Memorandum to the Ethics 2003 Committee's Proposed Rules of Professional Conduct* at 203 (2004) (on file with author).

¹⁰ See generally Elizabeth A. Turner, 2 Wash. Prac., *Rules Practice RPC 6.5* (9th ed. 2022) (outlining amendments to the rule and comments).

¹¹ Washington Supreme Court Order 25700-A-1096 at 65-66 (Mar. 23, 2015)

¹² Washington Supreme Court Order 25700-A-1352 (June 4, 2021). A minor change to a cross-reference in Comment 7 was also made in 2016. See Washington Supreme Court Order 25700-A-1146 (Jun. 2, 2016). There is a corresponding LLLT RPC that largely mirrors its lawyer counterpart. See LLLT RPC 6.5.

¹³ See also RPC 6.5, cmt. 3 (discussing knowledge in this context).

¹⁴ See also RPC 6.5, cmt. 4 (discussing imputation in this context).

¹⁵ See also RPC 6.5, cmts. 7-8 (discussing screening and prospective notice of that remedy).

¹⁶ See RPC 6.5, cmt. 8.

¹⁷ WSBA Advisory Opinion 202002 (2022) addresses the associated topic under RPC 1.2(c) of "ghostwriting" for *pro se* parties in Washington state trial court proceedings.

¹⁸ If limited advice would not be reasonable under the circumstances, Comment 2 to RPC 6.5 suggests that the lawyer "may offer advice to the client but must also advise the client of the need for further assistance of a legal practitioner."

¹⁹ See ABA Formal Op. 472 at 2-4 (2015) (recommending that informed consent under ABA Model Rule 1.2(c) be confirmed in writing even though not required under the Rule).