

# ESTABLISHING AND MANAGING EFFECTIVE INTERNAL CONFLICT SCREENS

*(RPC 1.7 (c) Allows, But Screen to Protect Your Internal  
Representations)*

Washington State Association of Municipal Attorneys  
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# Thank You

- Megan Davis, Washington Attorney General's Office;
- Jim Emacio, Spokane County Deputy Prosecutor;
- Chris Bacha, Tacoma City Attorney;
- Kristie Elliot, King County Senior Deputy Prosecuting Attorney;
- Roger Wynne, Seattle Assistant City Attorney;
- Mike Piccolo, Spokane City Attorney;
- James Erb, Bellingham Assistant City Attorney;
- and, **Hugh Spitzer, Professor (Ret.) and Associate Dean Emeritus, UW Law School.**

# The Problem

**Q:** When, if ever, can Washington lawyers who are public officers or employees in the same government law office represent different agencies in disputes with each other?

**A:** The answer was



# The Solution



# The Relevant RPCs

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## **RPC 1.0A(c).** Terminology

“Firm or “law firm” [includes] lawyers or LLLTs employed in a legal services organization or the legal department of a corporation or other organization.

## **RPC 1.0B(f).**

(f) “Government Entity” denotes the United States of America, the State of Washington, and any political subdivision or municipal corporation of the State.

# RPC Comment

Firm [12] Although the definition of "firm" or "law firm" in Rule 1.0A(c) differs from the definition set forth in the Terminology section of Washington's former Rules of Professional Conduct, there is no intent to change the scope of the definition or to alter existing Washington law on the application of the Rules of Professional Conduct to lawyers in a government office.

# The Relevant RPCs

## **RPC 1.7(a). Current Conflicts of Interest**

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
- (1) the representation of one client will be directly adverse to another client;  
or
  - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

# The Relevant RPCs

## RPC 1.7(b). Conflicts of Interest -- Exceptions

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) **the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal;** and
- (4) each affected client gives informed consent, confirmed in writing. [Emphasis added.]

# The Relevant RPCs

## RPC 1.7, Cmt. 28 [part]

- (1) **[A] lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other . . .** [Emphasis added].

# Clarification of RPC 1.7

(c) A lawyer who is a public officer or employee shall not be in violation of this rule when that lawyer represents more than one agency, branch, or unit or subdivision within a government entity, and/or officer or employee within that government entity, if the lawyer reasonably believes that the multiple representations are required or allowed by constitutional or statutory provisions or by other applicable law.

# Why *Clarification*?

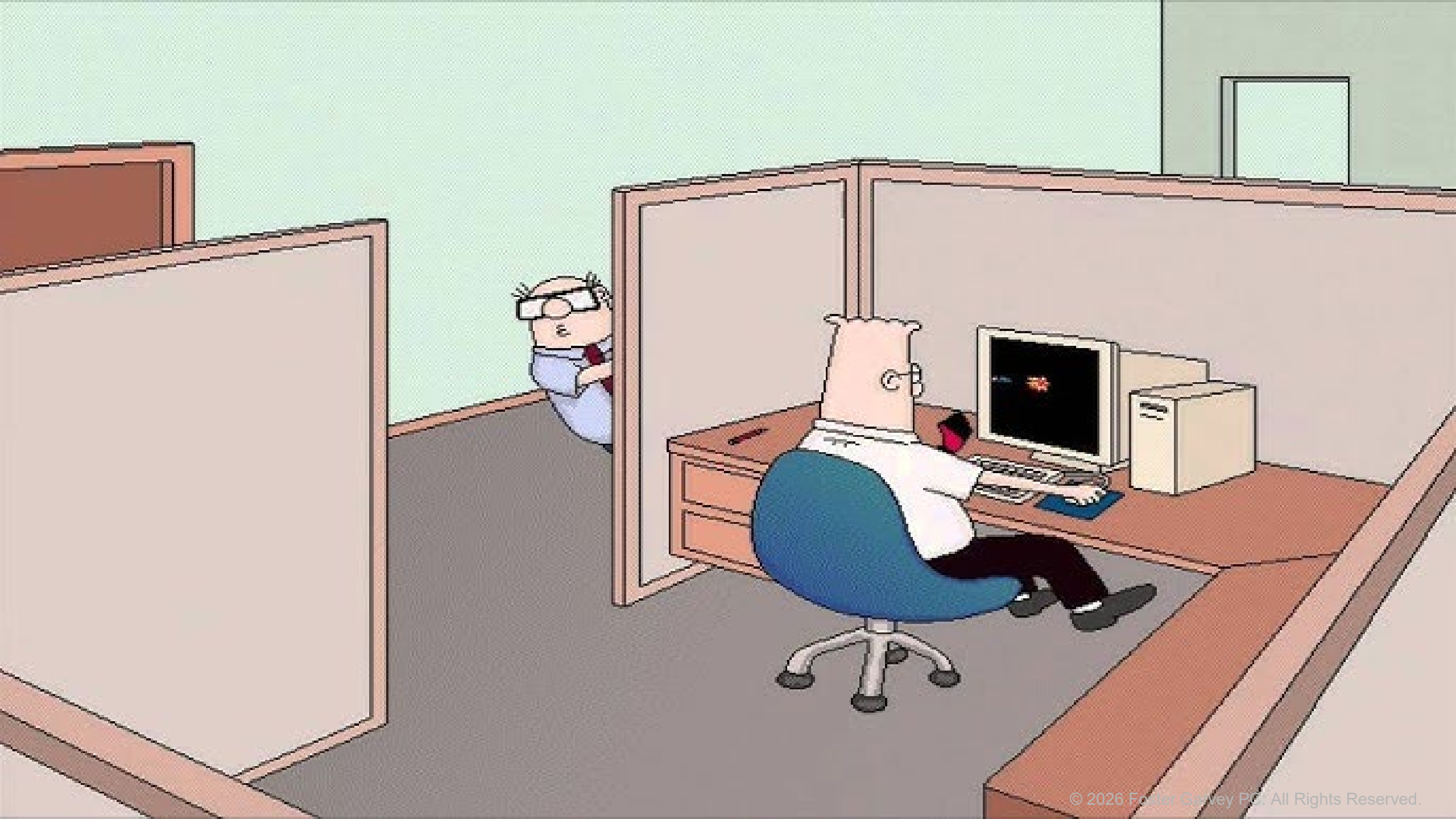
Comment [42]

RPC 1.7(c) merely codifies established practice that lawyers who are public officers or employees when they represent multiple agencies have the authority to represent multiple agencies and does not imply that prior to its adoption lawyers representing multiple governmental entities violated the Rules of Professional Conduct relating to conflicts.

...

# RPC 1.7 Comment 42 (cont.)

. . .when there is adverse representation in litigation or before a tribunal, the multiple representations may require informed consent from various agencies, branches, units or subdivisions, and/or an effective screening mechanism among the lawyers or the engagement of one or more lawyers who are not officers or employees of that government.



# What *are* Government “Clients”?

- Is a government a single, unitary client like a corporation, which is considered as one client including all its divisions and wholly-owned subsidiaries?
- When and if agencies at a particular government level are different “clients,” and who gets to represent them?
- When must outside counsel be used to avoid multiple client conflicts?

# How Washington State Courts Approach the Issue

*Washington Medical Disciplinary Board. v. Johnston* (1983):

“When the performance of any legal duties required of the Attorney General presents *actual conflicts of interest*, a different assistant attorney general can, and should, be assigned to handle those inconsistent functions.” [Emphasis supplied.]

- But what’s an “actual conflict”?

# Washington State Cases

*Amoss v. Univ. of Washington* (1985):

Using different AG's to represent different internal UW parties in a tenure evaluation presented "no actual impropriety or violation of the appearance of fairness doctrine."

# Washington State Cases

*Sherman v. Univ. of Washington* (1996):

Trial court disqualification of AGs as a whole from representing separate UW parties in a termination dispute, was an inappropriate and “drastic” measure. Screening that allows different attorneys in the AG’s office to represent the different UW parties, works fine.

# Washington State Cases

*Sammamish Community Municipal Corporation v. City of Bellevue* (2001):

Court recognized the “difference between the relationship of a lawyer in a private law firm and a lawyer in a public law firm such as a prosecuting attorney, public defender, or attorney general with respect to compliance with the conflict-of-interest rules.”

# Washington State Cases

*Sammamish Community Municipal Corporation v. City of Bellevue* (2001):

“Thus, it is accepted practice for different attorneys within the same public office to represent different clients with conflicting or potentially conflicting interests so long as an effective screening mechanism exists within the office sufficient to keep the clients’ interests separate.”

# RPC 1.7 Adjusted to Focus Lawyers' & Judges' Attention on Washington Caselaw

- Committee on Professional Ethics and WSBA Board of Governors proposes Washington RPC adjustments to the State Supreme Court.
- Supreme Court approves changes on July 2, 2025 (Order No. 25700-A-1649), effective September 1, 2025.

# Unpacking those italicized phrases:

***“if the lawyer reasonably believes”***

***“multiple representations are required or allowed by constitutional or statutory provisions or by other applicable law.”***

# Policy to Address?

1. The City Attorney shall identify the employees who need to be screened. When multiple clients or multiple constituent parts of the City involved, all Assistants and staff representing one client or part of the City, including supervisors with whom they discuss the matter, must be screened from all Assistants and staff representing the other client or part of the City. If groups of employees within the same section are screened from each other, one group will be assigned to report to the City Attorney [or Division/Section head] for the screened matter.
2. Screened attorneys and staff who are working on the screened matter will be informed that the screening is in place and that they may not (1) communicate with the other screened attorneys or staff with respect to the screened matter or (2) access files or documents related to the screened matter.

# Questions on Applying this in Practice

- Do these changes affect private counsel hired to represent government entities or individuals? *Cf.* RPC 1.13(h).
- Must screens be permanent or can they be established and staffed case by case?
- What does this mean for confidentiality and file maintenance when a matter is over?

# Screen!



# Questions?

# Thank you.



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