



# When Decorum Breaks Down: Ethical Lawyering Amid Hostility and Misinformation

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Charlotte Archer, Inslee Best

# Today's Discussion



## Disinformation and the Duty of Truth

✓ RPCs 4.1, 2.1, 8.4 and 1.6

## Clients in Conflict

✓ RPCs 1.13, 1.7, 1.4, and 1.6

## Staying vs. Stepping Away

✓ RPCs 1.16, 1.7 and 8.4

# Disinformation and the Duty of Truth

RPCs 4.1, 2.1,  
1.6, 8.4 and  
1.13



# When clients misrepresent (or ask us to support a misrepresentation)

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Government lawyers have an ethical duty to uphold the law, act with candor, and protect the public interest, which sometimes conflicts with their duties when government officials lie to the public.

If the lie is fraudulent or criminal, lawyers must counsel against it, withdraw from representation, or potentially disclose the deception, depending, in part, on Washington Rules of Professional Conduct.



# RPC 4.1 - Truthfulness in Statements to Others

Lawyers are prohibited from knowingly making a false statement of material fact to a third person.

- ✓ Required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts
- ✓ A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false.
- ✓ Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.
- ✓ Must not fail to disclose a material fact if that disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless such disclosure is prohibited by RPC 1.6.

# RPC 2.1 - Advisor

In representing a client, a lawyer shall exercise **independent professional judgment** and render **candid advice**. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice can sometimes be inadequate...Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice...

# RPC 1.6 - Confidentiality of Information

A lawyer must not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized, or an exception applies.

- ✓ Limited exceptions allow disclosure to prevent certain harms, such as preventing a crime or fraud, or mitigating substantial injury where the lawyer's services were used.
- ✓ Disclosure should be no more than reasonably necessary.
- ✓ Lawyer should first seek to persuade the client to take suitable action to eliminate the need for the disclosure.

# RPC 8.4 - Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice; [and] ...
- (i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act that reflects disregard for the rule of law...

# RPC 1.13 - Organization as Client

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, **then the lawyer shall proceed as is reasonably necessary in the best interest of the organization** . Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, **the lawyer shall refer the matter to higher authority in the organization** ...



# Video Debrief

## Correcting Misinformation

- Public confrontation as a strategy
- Open accusation of misconduct
- Did the lawyer have an obligation to correct the record?
- Pro: Proper use of a recess

# The “Spin” v. the “Lie”

## Scenario #1:

A city is considering a Development Agreement, and a preliminary traffic impact analysis indicates it would likely increase traffic congestion. When questioned by Council, the Development Director (just wanting the 2-hour discussion to be over) says, “the project would have no impact on traffic.”

What would you do?

- States a material fact that is false
- Council may rely on distortion of fact in decision
- Concerns under RPC 4.1 and 1.2?
- Concerns about credibility and public trust?

## Scenario #2:

A city is considering replacing streetlights with new LED fixtures. During debate, a Councilmember states: “The lights the City has chosen are proven to cause cancer.”

What would you do?

- States an opinion ~~a~~ facta
- Public representation that City is assuming liability for harm.
- Concerns under RPC 1.13 (not a speaking agent)
- When does simplifying complex science for the public become a misrepresentation rather than effective communication?

# Misrepresentation of the Law

## Scenario #3:

City council wants to adopt an ordinance barring non residents of the city from speaking at its meetings and allowing chair to gavel down speakers who criticize the city.

During discussion, Chair says “the attorney said the ordinance can be legally defended.”

What would you do?

- Preserve legal advice in the record?
- Advise on exposure as policy is implemented
- Violation of law?
- RPC 2.1 loss of political credibility as factor

## Scenario #4:

During council budget discussion, one councilmember repeatedly questions the accuracy of the figures, commenting that the numbers “don’t add up”.

What would you do?

- Corrective statement on the record
- Counsel regarding accuracy of public statements
- Advise on institutional harm implying dishonesty by staff without evidentiary basis

# Clients in Conflict

RPCs 1.13, 1.7,  
1.4, and 1.6



# RPC 1.13(b) - Refresher

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# RPC 1.7 - Conflict of Interest

## RPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

A lawyer shall not represent a client if the representation involves a concurrent conflict of interest, and 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.

Cmt. 29: A lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, **the risk of failure is so great that multiple representation is plainly impossible.** For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated.

# RPC 1.4 - Communication

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0A(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.



# Video Debrief

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## Conflict over Rules

- Enforcement of Rules as point of conflict
- Public discussion of positions
- Attorney's role in mediating / resolving conflict

# Scenario #1

Councilmember writes an email to the whole council (with you cc'd) that they are being targeted by the Chair due to their gender: they're not getting called on, they're getting interrupted, and the Chair rolls his eyes at their comments.

What do you do?

- Encourage use of existing procedures (and if you don't have them, adopt them)
- Facilitate a mediation through the lens of risk management (RPC)
- Lawyer's role is to:
  - ✓ RPC 1.13 - Support the institution through risk mitigation without becoming a participant in internal political conflict
  - ✓ Not to arbitrate interpersonal truth, but to ensure the institution has fair, consistent, and legally defensible governance processes.

# Scenario #2

City is in the middle of a sensitive personnel investigation involving a department director accused of making inappropriate comments to staff. Report from outside counsel contains unverified allegations, witness statements, and credibility assessments. Potential resolution involves severance agreement and payment to a staff member. Council wants “all the details” including the report.

What do you do?

- Carefully limited update, in executive session (control the documents)
- Reiterate confidentiality as critical to negotiations
- Client must be kept reasonably informed and provided with sufficient information to make decisions when required, while balancing investigative integrity and risk.

**TARGET**  
INVESTIGATION 

**SHELLY RIBANDO**

**DOUG FERNANDEZ**



# Video Debrief

## Conflict of Interest

- City Attorney's continued participation in litigation
- Executive v. Legislative
- Conflict of Interest

# Staying vs. Stepping Away

RPCs 1.16, 1.7  
and 8.4



# RPC 1.16 - TERMINATING REPRESENTATION

A lawyer shall not represent a client or, where representation has commenced, shall, notwithstanding RCW 2.44.040, withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

*Would the representation cause a violation of:*

- ? RPC 1.7 – Conflict of Interest
- ? RPC 8.4 – Misconduct
- ? RPC 4.1 – Truthfulness



# Video Debrief

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## Walking Away

- Life's too short
- Contract hadn't been signed
- Evidence of conflict

# Case Study: Managing Social Media Risk

facebook

Share your victories and strategies

# THANK YOU!

Charlotte Archer, Inslee Best | [carcher@insleebest.com](mailto:carcher@insleebest.com)

