

Ethics Training For GLBA

December 9, 2016



ARE YOU MY LAWYER?



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Role of Attorney General's Office in
Representing Washington State
Legislature

Ethics Training for GLBA

DISCLAIMER !

The opinions expressed today are not the official opinions of the Attorney General Or of the Attorney General's Office.

Four Categories of RPCs

- Relations between attorney and client (Title 1).
- The responsibility of an attorney as an advocate and as an advisor (Titles 2, 3, and 4).
- Responsibilities related to business relationships (Titles 5 and 7).
- Personal conduct of attorneys (Titles 6 and 8).

Ethics Training

This presentation will focus primarily on:

- The role of lawyers who work for the government, including the AGO, other attorneys retained by the legislature for the legislature, and legislative staff.
- Identification of “client” in government practice.
- Obligations of confidentiality in representing governmental entities and officers.

Why Us?

The Attorney General shall:

- Appear for and represent the state... in all cases in which the state is interested;
- Institute and prosecute all actions and proceedings for... the state, which may be necessary in the execution of the duties of any state officer;

Why Us(con't)

The Attorney General shall:

- Defend all actions and proceedings against any state officer or employee acting in his or her official capacity;
- Consult with and advise the governor, members of the legislature, and other state officers, and when requested, give written opinions upon all constitutional or legal questions relating to the duties of such officers....

RCW 43.10.030

What do AAGs do anyway?

The attorney general shall also represent the state and all officials, departments, boards, commissions and agencies of the state in the courts, and before all administrative tribunals or bodies of any nature, in all legal or quasi legal matters, hearings, or proceedings, **and advise all officials, departments, boards, commissions, or agencies of the state in all matters involving legal or quasi legal questions, except those declared by law to be the duty of the prosecuting attorney of any county.**

RCW 43.10.040

There Can Be Only One

No officer, director, administrative agency, board, or commission of the state, other than the attorney general, shall employ, appoint or retain in employment any attorney for any administrative body, department, commission, agency, or tribunal or any other person to act as attorney in any legal or quasi legal capacity in the exercise of any of the powers or performance of any of the duties specified by law to be performed by the attorney general....

RCW 43.10.067

But Aren't There Lawyers At The Legislature?

The legislature may employ or retain counsel of its own choosing.

- Notify the attorney general whenever it makes a decision to use the services of such counsel.
- The attorney general shall represent the legislature until so notified.
- For purposes of this section, "legislature" means the senate and house of representatives together.

RCW 43.10.045

Who is the AGO's client?

- State government as a whole
- Executive agencies, even when they disagree
- Officers and employees
- When branches of government disagree
- RPC 1.13 Organization as Client
- Section (h)
- Comment 9

AGO Interaction With The Legislature

The AGO will communicate with legislature on pending matters, in cooperation and consultation with the represented agency and where appropriate, the Governor's Office:

- Consult with and brief the Legislature on matters in litigation in the following circumstances:
 - When, in the judgment of the AGO, resolution of the case requires a specific appropriation or adjustment of appropriations by the Legislature.

AGO Interaction With The Legislature (con't)

- When, in the judgment of the AGO and the affected agencies, resolution of the case requires program or policy changes that will require legislative appropriation or action to change substantive law.
- Where, in the judgment of the AGO, the Legislature should be made aware of a particular case or category of cases in advance of a court ruling, both for informational and contingency planning purposes.

Who Do We Talk To On The Hill?

Manner of Communication (Tort Protocol)

- The initial point of contact on all litigation matters will be with the Counsel and Budget Counsel for both the House and Senate.
- In consultation with House and Senate Leadership, House and Senate Counsel and Budget Counsel will designate the ongoing primary point of contact in each house for each matter. Those primary contacts will identify any members or other staff who also should be included in ongoing briefings, meetings, or other communications.

Confidentiality-Preserving Privilege

RPC 1.6 Confidentiality

Representatives of the Legislature have agreed to the following:

- The AGO and the legislative members and appropriate staff will preserve the confidences and privileged nature of the information shared on any given case.
- The privileged nature of any information may be waived only by the entity that provided the communication or document.

Confidentiality-Preserving Privilege (con't)

RPC 1.6 Confidentiality

Representatives of the Legislature have agreed to the following:

- Prior to exchanging privileged information, the AGO and counsel will advise on limitations on further dissemination of privileged information and the need to maintain confidentiality.
- Individuals receiving privileged information are not authorized to waive privilege, as the privilege belongs to the State, not any individual. The AGO expects that it will be immediately notified of demands for privileged information by subpoena, public records request or otherwise and have an opportunity to object and seek protection of such materials.

Scenarios for Confidential Communications

- Communications with legislators
- Communications with legislative staff
- Legislative hearings
- Legislative requests for work-product or confidential information
 - To assist with constituent responses
 - Furthering representation

Confidential Communication

What is confidential information?

- RPC 1.6
- RCW 42.52.010(5) defines confidential information as (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.
- Bill drafting Information

Yes You Survived

THANK YOU!