



WSBA

Informal Opinion: 2170

Year Issued: 2007

RPC(s): RPC 1.2(c)

Subject: Four way agreement between attorney, client, opposing party, and opposing party's attorney as used in the practice of collaborative law

The inquiring lawyer asks if it is proper under the Rules of Professional Conduct for a Washington family law attorney to enter into a four-way agreement with his or her client, the opposing party, and the opposing party's lawyer? The four-way agreement is a cornerstone of a dispute resolution system described as "collaborative law," in which all participants commit to settlement through negotiation without resort to traditional litigation, after each provides full and honest disclosure of all information to each other. Each side retains a lawyer of the party's choosing who assists in the negotiation process. Experts, such as accountants, appraisers, and mental health professionals, are also employed as needed. The lawyers limit the scope of their representation to achieving resolution through non-adversarial processes, and agree to withdraw from the representation if negotiation is unsuccessful and there is ensuing adversarial litigation.

Since the collaborative law process in a family law setting involves a limitation on the scope of a lawyer's representation of the client, under RPC 1.2(c) it is permissible if the limitation is reasonable under the circumstances and if the client gives informed consent. The limitation is reasonable if, at the outset, the lawyer in the exercise of sound professional judgment believes the client's interests are likely to be well-served by participation in the collaborative law process. The predicates of the client's informed consent include a consideration of the objectives of the client, the potential benefits and risks of the collaborative law process, and the availability of other alternatives.

Informal opinions are provided for the education of the Bar and reflect the opinion of the Rules of Professional Conduct Committee. Informal opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official opinion of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The committee's answer does not include or opine about any other applicable law than the meaning of the Rules of Professional Conduct. Informal opinions are based upon facts of the inquiry as presented to the committee.