

Idaho Water Users Association

Virtual 84th Annual Convention – January 26, 2021

MULTI-PARTY REPRESENTATION IN WATER LAW MATTERS

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The logo for Parsons Behle & Latimer, featuring the firm's name in white, bold, sans-serif capital letters on a dark blue square background.

**PARSONS
BEHLE &
LATIMER**

Multiparty Representation

IDWR Proceedings (IDAPA 37.01.01):

- Applicants/Protestants/Intervenors
- Petitioners/Respondents/Intervenors

Adjudications (Administrative Order 1)

- Claimants/Objectors/Respondents
& Participants

Multiparty Representation

- Applicant v. Protestant or Claimant v. Objector? Parties asserting claims *against* one another in same litigation/proceeding.
 - I.R.P.C. Rule 1.7. Conflict of Interest.
 - Comment 23: Prohibits representation of opposing parties, regardless of consent.

Multiparty Representation

- Co-Protestants or Co-Objectors? Interests in litigation *may* conflict.
 - I.R.P.C. Rule 1.7. Conflict of Interest.
 - Comment 23: Common representation is proper if lawyer reasonably believes lawyer will be able to provide diligent representation to each client, the clients do not have claims against one another, and each client gives informed consent, confirmed in writing.

Multiparty Representation

- Co-Protestants or Co-Objectors? Interests in litigation *may* conflict.
 - I.R.P.C. Rule 1.2. Scope of Representation.
 - A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.

Multiparty Representation

- Inconsistent legal positions for different clients? Rule 1.7. Conflict of interest.
 - Comment 24: A conflict of interest exists if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client.

Multiparty Representation

- Organizational clients? Rule 1.7. Conflict of interest.
 - Comment 34: A lawyer who represents an organization does not necessarily represent any constituent of the organization; the lawyer may therefore accept representation adverse to the constituent in an unrelated matter, unless the circumstances suggest otherwise.

Multiparty Representation

- Organizational clients and directors? Rule 1.13. Organization as client.
 - The entity is the client – not the organization’s directors, officers, employees, members, shareholders or other constituents. However, the lawyer may also represent the organization’s directors, officers, employees, members, shareholders or other constituents, subject to Rule 1.7 (conflict of interest).

Multiparty Representation

- Rule 1.1. Competence.
 - A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
 - Comment 1: Relevant factors include the complexity and specialized nature of the matter. Expertise in a particular field of law may be required in some circumstances.

Multiparty Representation

- Rule 1.3. Diligence.
 - A lawyer shall act with reasonable diligence and promptness in representing a client.
 - Comment 1: A lawyer should take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor.
 - Comment 3: Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected.

Multiparty Representation

- Rule 1.4. Communication.
 - A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished and shall keep the client reasonably informed about the status of the matter.
 - Comment 2: A lawyer must promptly inform the client of the substance of any settlement offer to obtain consent prior to taking action.

Multiparty Representation

- Rule 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.
 - Comment 2: Purely technical legal advice can sometimes be inadequate.

For more information or questions, please contact:

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