

The Honorable Robert S. Lasnik
The Honorable David G. Estudillo
The Honorable Lawrence Van Dyke

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

BENANCIO GARCIA III,

Plaintiff,

v.

STEVEN HOBBS, in his official capacity
as Secretary of State of Washington, and
STATE OF WASHINGTON,

Defendants.

NO. 3:22-cv-5152-RSL-DGE-LJCV

DEFENDANT STATE OF
WASHINGTON’S MOTION FOR
INQUIRY CONCERNING
POTENTIAL CONFLICTS OF
INTEREST

NOTE FOR MOTION
CALENDAR: MARCH 3, 2023

I. INTRODUCTION¹

The State of Washington respectfully requests that the Courts in both *Soto Palmer v. Hobbs*, No. 3:22-cv-5035-RSL, and *Garcia v. Hobbs*, No. 3:22-cv-05152-RSL-DGE-LJCV, conduct an inquiry into potential conflicts of interest that could affect the ability of counsel for Plaintiff Benancio Garcia and Intervenor-Defendants Ismael Campos, Jose Trevino, and Alex Ybarra (the *Soto Palmer* Intervenor) to represent them in these cases. Mr. Garcia and the *Soto Palmer* Intervenor are represented by the same counsel—Andrew Stokesbary and attorneys with the law firm of Holtzman Vogel—and recent deposition testimony appears to confirm a

¹ This identical motion is being filed concurrently in both *Soto Palmer v. Hobbs* and *Garcia v. Hobbs*.

1 conflict between Mr. Garcia and the *Soto Palmer* Intervenors that either cannot be waived or, at
2 a minimum, has not been waived with informed consent.

3 Counsel for the State are filing this motion because it has an interest and an obligation to
4 ensure it represents its client, the State of Washington, competently (RPC 1.1) and diligently
5 (RPC 1.3). Those duties include raising potential conflicts with the Court as they arise and
6 involving the Court in the process of addressing a potential conflict before it undermines a
7 proceeding or confidence in the effective administration of justice. *Cf. Manhalt v. Reed*,
8 847 F.2d 576, 583-84 (9th Cir. 1988) (observing, after concluding that the defendant’s lawyer’s
9 conflict of interest adversely affected his lawyer’s performance, that prosecutors “had an ample
10 opportunity to bring the potential conflict to the trial judge’s attention and move for
11 disqualification if appropriate”).

12 The State does not take a position on whether disqualification is necessary or appropriate
13 here. But in light of the potential conflict, the State requests that the respective Courts exercise
14 their “inherent power to protect the integrity of their processes,” *FMC Techs., Inc. v.*
15 *Edwards*, 420 F. Supp. 2d 1153, 1156 (W.D. Wash. 2006) (cleaned up), and conduct an inquiry
16 to determine whether counsel must be disqualified from representing Mr. Garcia and/or the
17 *Soto Palmer* Intervenors.

18 II. BACKGROUND

19 A. The *Soto Palmer* and *Garcia* Lawsuits and the Potential for Conflict

20 The potential conflict of interest arises from two cases in which Mr. Garcia and the *Soto*
21 *Palmer* Intervenors appear to take opposing positions. In *Garcia v. Hobbs*, Mr. Garcia challenges
22 the constitutionality of Legislative District 15, as enacted in the 2021 redistricting cycle, as an
23 illegal racial gerrymander. *Garcia*, Case No. 3:22-cv-5152-RSL, Dkt. #14 at 1. Among other
24 remedies, Mr. Garcia requests injunctive relief barring Secretary Hobbs and the State from
25 giving effect to the enacted boundaries of Legislative District 15 and ordering the creation of a
26 revised Legislative District map. *Id.* at 18. In contrast, in *Soto Palmer v. Hobbs*, the *Soto Palmer*

1 Intervenor ask the Court to dismiss the plaintiffs’ Voting Rights Act challenge to Legislative
2 District 15, which would have the effect of maintaining Legislative District 15 as enacted. *Soto*
3 *Palmer*, No. 3:22-cv-5035-RSL (*Soto Palmer*), Dkt. #77 at 32.

4 Mr. Stokesbary represents both Mr. Garcia and the *Soto Palmer* Intervenor. *Garcia*
5 Dkt. #14; *Soto Palmer* Dkt. #77. Attorneys from the law firm Holtzman Vogel Baran Torchinsky
6 & Josefiak PLLC have appeared in *Soto Palmer* on behalf of *Soto Palmer* Intervenor. *See*
7 *Soto Palmer* Dkts. ##86, 88, 90, 96, & 119. Holtzman Vogel attorneys have not appeared in the
8 *Garcia* matter, but on February 2, 2023, Phil Gordon of Holtzman Vogel informed the State that
9 Holtzman Vogel was also representing Mr. Garcia and that a motion for admission *pro hac vice*
10 in that matter would be forthcoming. Declaration of Andrew Hughes (Hughes Decl.), Ex. 1. Mr.
11 Garcia has confirmed this representation. *Id.*, Ex. 2 at 57:14-59:11.

12 The issue of a potential conflict was previously brought to the attention of the *Soto*
13 *Palmer* Court when *Soto Palmer* Intervenor first sought to intervene in this litigation. In
14 opposing intervention, *Soto Palmer* Plaintiffs pointed out that Mr. Stokesbary’s representation
15 of Mr. Garcia, “a party seeking to challenge LD 15[,] and [Intervenor’s] apparent desire here to
16 defend it at least raises questions as to whether their participation as intervenors is appropriate.”
17 *Soto Palmer*, Dkt. #64 at 12. In response, *Soto Palmer* Intervenor’s Counsel argued that “while
18 Intervenor share counsel with the plaintiff in *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash.
19 filed March 15, 2022) (challenging Legislative District 15 under the Fourteenth Amendment),
20 there is no conflict to argue that a district is an unconstitutional racial gerrymander under the
21 Equal Protection Clause but is not also covered by section 2 of the VRA.” *Soto Palmer*, Dkt. #67
22 at 7. In that early posture, the *Soto Palmer* Court concluded that “[a]t present,” it did “not
23 perceive an insurmountable conflict between the claims set forth in *Garcia v. Hobbs*, C22-
24 5152RSL, and intervenor’s opposition to plaintiffs’ Section 2 claim.” *Soto Palmer*, Dkt. #69 at 9
25 But the Court continued: “If it turns out that counsel’s representation gives rise to a conflict
26

1 under the Rules of Professional Conduct . . . , those issues can be heard and determined through
2 motions practice as the case proceeds.” *Id.* at 9-10.

3 Recent discovery, including the February 3, 2023, deposition of Mr. Garcia, appears to
4 confirm the *Soto Palmer* Plaintiffs’ concerns about an insurmountable conflict of interest.

5 **B. The Potential Conflict Emerges**

6 The potential conflict came into sharper focus when two of *Soto Palmer* Intervenors, Jose
7 Trevino and Alex Ybarra (*Soto Palmer* Intervenor-Plaintiffs), sought to amend their Answer to
8 include a crossclaim for declaratory and injunctive relief identical to Mr. Garcia’s claim
9 attacking the constitutionality of Legislative District 15 as an illegal racial gerrymander. *Soto*
10 *Palmer*, Dkt. #103. In a subsequent court filing, Mr. Stokesbary, as counsel for both *Soto Palmer*
11 Intervenors and Mr. Garcia, represented to the Court that Mr. Garcia would dismiss his action
12 should the Court permit the crossclaim in the *Soto Palmer* matter to proceed. *Soto Palmer*, Dkt.
13 #109 at 2. As detailed below, Mr. Stokesbary appears to have failed to seek authority from his
14 client before making that representation to the Court, and this representation was in fact contrary
15 to the directional wishes of Mr. Garcia as to how his case should proceed.

16 Although Mr. Trevino and Mr. Ybarra had sought to add a crossclaim challenging the
17 constitutionality of Legislative District 15 and had requested injunctive relief barring the
18 enforcement of Legislative District 15 and requiring the creation of a new map, both litigants
19 later testified that they were satisfied with Legislative District 15 as enacted and had no desire
20 to modify the enacted boundaries. *Soto Palmer*, Dkt. #127 at 1-2; Dkt. #127-1 at 111:10-12; Dkt.
21 #127-2 at 21:1-11.

22 The Court denied the *Soto Palmer* Intervenor-Plaintiffs’ request to amend their answer
23 to add a crossclaim for declaratory and injunctive relief. Dkt. #136.

24 **C. Mr. Garcia’s Deposition Appears to Confirm a Conflict of Interest**

25 Troubling testimony pointing to potential conflicts came to light during Mr. Garcia’s
26 February 3, 2023 deposition. Mr. Garcia testified that he had been unaware of the *Soto Palmer*

1 litigation prior to receiving a copy of a subpoena the previous week. Hughes Decl., Ex. 2 at
2 46:7-10. He further testified that he had never agreed to dismiss his lawsuit if the *Soto Palmer*
3 Intervenor-Plaintiffs had been allowed to bring their racial gerrymandering claim in that lawsuit,
4 nor had he authorized Mr. Stokesbary to represent to the Court that he had agreed to do so. *Id.*
5 at 47:8-12 & 50:2-17. He testified that he was “not pleased” that Mr. Stokesbary had made this
6 representation to the Court on his behalf and was also displeased to be hearing about it for the
7 first time at his deposition. *Id.* at 60:4-18.

8 Mr. Garcia also testified that prior to his deposition, he had been unaware that his
9 attorneys also represented the *Soto Palmer* Intervenors, who wanted Legislative District 15 to
10 remain unchanged. *Id.* at 59:12-61:1. He testified that he found it problematic that his counsel
11 was representing clients with positions that conflicted with his. *Id.* at 61:7-14. He also testified
12 that he had never signed a conflict waiver. *Id.* at 96:15-17.

13 Mr. Garcia also stated that prior to his deposition, he had not been aware that Mr.
14 Stokesbary served in the Washington State Legislature and had voted in favor of the enacted
15 Legislative District 15. *Id.* at 65:18-25. He testified that he found this revelation upsetting as
16 well. *Id.* at 65:18-66:7. When asked whether he was concerned about what he had learned in the
17 deposition with respect to his counsel, he answered in the affirmative. *Id.* at 66:20-67:3.

18 Mr. Garcia also testified to a lack of communication with his counsel. Specifically, he
19 testified that he did not receive copies of his subpoenas from counsel and instead, first learned
20 of the subpoenas’ existence when a process server came to his house a week and a half after they
21 had been served on his counsel. *Id.* at 88:13-25; Hughes Decl., Ex 3. He further testified that
22 after filing his Complaint in spring of 2022, he did not speak with Mr. Stokesbary again until the
23 last week of January 2023, when he reached out to Mr. Stokesbary to discuss the subpoenas he
24 had just received. Hughes Decl., Ex. 2 at 98:4-16. The only other communication with his
25 counsel that he could recall was a letter he had received five or six months before the deposition.
26 *Id.* at 104:5-14. Mr. Garcia also testified that he did not know that he had an expert, had not

1 reviewed the expert's report, and did not know about the approaching trial date in his case.
2 *Id.* at 105:5-106:4.

3 Mr. Garcia further testified that while he was aware that a third party was funding his
4 lawsuit, he did not know the identity of the third party. *Id.* at 103:6-13.

5 III. ARGUMENT

6 A. Legal Standard

7 “The primary responsibility for controlling the conduct of lawyers practicing before the
8 district court rests with that court.” *Trone v. Smith*, 621 F.2d 994, 999 (9th Cir.1980). Thus, “this
9 Court has a duty to examine charges of conflict of interest.” *FMC Techs.*, 420 F. Supp. 2d at
10 1157 (citing *U.S. for Use & Benefit of Lord Elec. Co., Inc. v. Titan Pac. Const. Corp.*, 637 F.
11 Supp. 1556, 1562 (W.D. Wash. 1986)).

12 To determine whether a lawyer's representation violated his or her ethical duties, “the
13 Court first refers to the local rules regulating the conduct of members of its bar.” *Lord Elec.*
14 *Co.*, 637 F. Supp. at 1560. Lawyers appearing in the Western District of Washington must be
15 familiar with and comply with the Washington Rules of Professional Conduct “[i]n order to
16 maintain the effective administration of justice and the integrity of the [C]ourt.” LCR 83.3(a);
17 *see In re Celcyte Genetic Corp. Sec. Litig.*, No. C08-47RSL, 2008 WL 5000156, at *2 (W.D.
18 Wash. Nov. 20, 2008).

19 “[C]ourts must consider the overarching question of whether a violation of such rules
20 will undermine, or seriously threaten to undermine, the integrity of judicial proceedings.” *M.O.*
21 *by C.O. v. Fairfax Cnty. Sch. Bd.*, No. 121CV00769RDAJFA, 2022 WL 264456, at *2 (E.D. Va.
22 Jan. 27, 2022) (cleaned up).

23 B. Potential Conflicts of Interest Under RPC 1.7

24 Washington Rule of Professional Conduct 1.7, governing conflicts of interest with
25 current clients, provides:
26

1 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the
2 representation involves a concurrent conflict of interest. A concurrent conflict of
interest exists if:

3 (1) the representation of one client will be directly adverse to another
4 client; or

5 (2) there is a significant risk that the representation of one or more clients
6 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.

7 (b) Notwithstanding the existence of a concurrent conflict of interest under
paragraph (a), a lawyer may represent a client if:

8 (1) the lawyer reasonably believes that the lawyer will be able to provide
9 competent and diligent representation to each affected client;

10 (2) the representation is not prohibited by law;

11 (3) the representation does not involve the assertion of a claim by one
12 client against another client represented by the lawyer in the same litigation or
other proceeding before a tribunal; and

13 (4) each affected client gives informed consent, confirmed in writing
(following authorization from the other client to make any required disclosures).

14 Paragraph (b)(3) of RPC 1.7 strictly prohibits representation of opposing parties in the
15 same litigation, regardless of the clients' consent." RPC 1.7, Cmt. 23. "On the other hand,
16 simultaneous representation of parties whose interests in litigation *may* conflict . . . is governed
17 by paragraph (a)(2)." *Id.* (emphasis added). "A conflict may exist by reason of substantial
18 discrepancy in the parties' testimony [or] incompatibility in positions in relation to an opposing
19 party[.]" *Id.*

20 Where a conflict exists and there is no *per se* bar to waiving it, the Court must determine
21 whether a "lawyer reasonably believes that [they] will be able to provide competent and diligent
22 representation to each affected client." This analysis includes both objective and subjective
23 components. *In re Cellcyte*, 2008 WL 5000156, at *2 (citing RPC 1.0(h) & (i)RPC 1.0(h) & (i)).

24 If, and only if, a conflict is waivable, "each affected client" must "give[] informed
25 consent." RPC 1.7(b)(4). "Informed consent requires that each affected client be aware of the
26 relevant circumstances and of the material and reasonably foreseeable ways that the conflict

1 could have adverse effects on the interests of that client.” RPC 1.7, Cmt. 18. “When
2 representation of multiple clients in a single matter is undertaken, the information must include
3 the implications of the common representation, including possible effects on loyalty,
4 confidentiality and the attorney-client privilege and the advantages and risks involved.” *Id.*

5 “In resolving motions to disqualify based on a lawyer's conflict of interest, courts in this
6 district typically place the burden on the firm whose disqualification is sought to show that no
7 conflict exists.” *United States Fire Ins. Co. v. Icicle Seafoods, Inc.*, 523 F. Supp. 3d 1262, 1268-
8 69 (W.D. Wash. 2021).

9 Mr. Stokesbary’s and Holtzman Vogel’s simultaneous representation of clients with
10 conflicting objectives appears to present a conflict of interest. Specifically, while Mr. Garcia
11 has asked the Court to invalidate the current Legislative District map, *Garcia*, Dkt. #14 at 18,
12 Mr. Trevino and Mr. Ybarra have expressed a desire to keep the current map in place. *Soto*
13 *Palmer* Dkt. #127 at 1-2.

14 Given the patent adversity between Mr. Garcia and the *Soto Palmer* Intervenor-Plaintiffs
15 in directly related matters, RPC 1.7(b)(3) may constitute a *per se* bar to counsel’s simultaneous
16 representation of parties in both suits. *See* RPC 1.7, Cmt. 23 (explaining that paragraph (b)(3) of
17 RPC 1.7 strictly “prohibits representation of opposing parties in the same litigation, regardless
18 of the clients’ consent.”).

19 Even if RPC 1.7(b)(3) does not categorically bar simultaneous representation here, it
20 appears that the conflict may be unwaivable under RPC 1.7(b)(1), which permits concurrent
21 representation only where “the lawyer reasonably believes that the lawyer will be able to provide
22 competent and diligent representation to each affected client.” It is difficult to imagine how
23 counsel could vigorously pursue Mr. Garcia’s interest in *striking down* the maps as an illegal
24 racial gerrymander, *Garcia*, Dkt. #14 at 18, while simultaneously pursuing Mr. Trevino and
25 Mr. Ybarra’s interest in *preserving* the maps that both have testified they do not believe are racial
26 gerrymanders. *Soto Palmer*, Dkt. #127 at 1-2. As this Court has previously explained, an

1 unwaivable conflict exists where counsel has “an obvious temptation . . . to ‘soft pedal’” its
2 representation of “its own clients to further the interest of other clients, or its own interest in
3 continuing the multiple representation.” *In re Cellcyte*, 2008 WL 5000156, at *3. And [t]he
4 conflict is even more apparent” in a case like this “because the matters are related.” *Id.*

5
6 However, even if the conflict here were waivable, Mr. Garcia’s deposition testimony
7 makes clear that there was no informed consent to any waiver. Indeed, Mr. Garcia did not learn
8 *until his deposition* that the *Soto Palmer* litigation even existed, let alone that his attorneys were
9 representing parties with conflicting interests and objectives. Hughes Decl., Ex. 2 at 46:7-10;
10 59:12-61:1. He further testified that he never signed a conflict waiver. *Id.* at 96:15-17. Likewise,
11 nothing in the record indicates that the *Soto Palmer* Intervenors consented to their counsel’s
12 simultaneous representation of Mr. Garcia.

13 Accordingly, the State respectfully requests that the Courts in each of these related
14 matters conduct an inquiry to determine whether Mr. Stokesbary’s and Holtzman Vogel’s
15 concurrent representation of Mr. Garcia and the *Soto Palmer* Intervenors presents a waivable
16 conflict and if so, whether each affected client provided the requisite informed consent to this
17 representation.

18 **C. Potential Conflict Regarding Undisclosed Third-Party Payments Under RPC 1.8**

19 The State respectfully moves the Court to additionally conduct an inquiry to assure itself
20 that counsel for Mr. Garcia and the *Soto Palmer* Intervenors are in compliance with RPC 1.8(f).

21 RPC 1.8(f) provides that “[a] lawyer shall not accept compensation for representing a
22 client from one other than the client” unless the following three conditions are met:

- 23 (1) the client gives informed consent;
- 24 (2) there is no interference with the lawyer’s independence of professional
25 judgment or with the client-lawyer relationship; and
- 26 (3) information relating to representation of a client is protected as required by
Rule 1.6.

1 Comment 11 to the Rule acknowledges that “[l]awyers are frequently asked to represent a client
2 under circumstances in which a third person will compensate the lawyer[.]” But because “third-
3 party payers frequently have interests that differ from those of the client, including interests in
4 minimizing the amount spent on the representation and in learning how the representation is
5 progressing,” lawyers must not accept or continue representation “unless the lawyer determines
6 that there will be no interference with the lawyer’s independent professional judgment and there
7 is informed consent from the client.” RPC 1.8, Cmt. 11.

8 During Mr. Garcia’s deposition, he was directly asked about the fee arrangement in his
9 case. Mr. Garcia testified that he himself was not paying attorney fees and believed that another
10 entity is, though he could not testify who. Hughes Decl., Ex. 2 at 103:6-104:23. This line of
11 testimony highlights a potential violation of RPC 1.8, which requires counsel for Mr. Garcia to
12 obtain their client’s informed consent if third parties are paying their fees.

13 Concerns about potential violations of RPC 1.8 also exist in *Soto Palmer*. For example,
14 at the deposition of Intervenor-Defendant Alex Ybarra, Mr. Ybarra testified that he had “no idea”
15 about who is paying for his representation. *Id.*, Ex. 4 at 116:4-12. The same for Intervenor Ismael
16 Campos, who likewise testified at his deposition that he was not paying for his attorneys and did
17 not know who was. *See id.*, Ex. 5 at 84:25-85:15.

18 For these reasons, the State respectfully request that the Courts conduct an inquiry into
19 whether Mr. Stokesbary and/or Holtzman Vogel have a conflict that precludes them from
20 continuing to represent their clients in both matters. To determine whether a lawyer is in
21 compliance with RPC 1.8(e)’s strict requirements, the Courts may need to review the third-party
22 fee-arrangement agreement(s) or conduct a colloquy with lawyers and/or clients regarding fee
23 arrangements and to confirm whether fully informed consent was given. *See, e.g., United States*
24 *v. Fazzio*, No. 11-cr-157, 2011 WL 6140746, at *3 (E.D. La. Dec. 9, 2011) (reviewing the fee
25 arrangement agreement in a criminal case and concluding that it produced conflicts).
26

1 **D. Other Potential Issues Under RPCs 1.2 and 1.4 Related to Counsel’s Representation**

2 “The purpose of the rule against concurrent representation is based ‘on the duty of
3 undivided loyalty an attorney owes a client.’” *In re Celcyte*, 2008 WL 5000156, at *3 (quoting
4 *Smiley v. Office of Workers Comp. Programs*, 984 F.2d 278, 282 (9th Cir. 1993)). In conducting
5 any inquiries, then, the respective Courts may also wish to consider three additional issues
6 regarding counsel’s conduct with respect to Mr. Garcia and the *Soto Palmer* Intervenors. The
7 first is counsel’s apparently unauthorized representation that Mr. Garcia was willing to dismiss
8 his suit if Intervenors were permitted to add their crossclaim. The second is counsel’s attempt to
9 plead a gerrymandering crossclaim on behalf of the *Soto Palmer* Intervenors that the Intervenors
10 testified they did not support. The third is counsel’s evident lack of communication with Mr.
11 Garcia. These are discussed briefly in turn.

12 **1. Counsel’s representations regarding dismissal of *Garcia v. Hobbs***

13 RPC 1.2 provides that “a lawyer shall abide by a client's decisions concerning the
14 objectives of representation and, as required by Rule 1.4 [governing a lawyer’s duty to
15 communicate with their client], shall consult with the client as to the means by which they are
16 to be pursued.” RPC 1.2²; *see also* RPC 1.4(a)(2) (“A lawyer shall . . . reasonably consult with
17 the client about the means by which the client's objectives are to be accomplished.”).

18 Notwithstanding this obligation to abide by their client’s wishes, it appears that counsel
19 made unauthorized representations to the *Soto Palmer* Court that Mr. Garcia was willing to
20 dismiss his lawsuit if the Court permitted Intervenor-Plaintiffs to add their crossclaim.
21 Specifically, in opposition to *Soto Palmer* Plaintiffs’ Motion to Bifurcate and Transfer, Strike,
22 and/or Dismiss Intervenors’ Crossclaim, Intervenors’ counsel explicitly “represent[ed] that
23 plaintiff in *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash.), will dismiss that action should
24

25 ² RPC 1.2 is “[s]ubject to” limitations in paragraph (c) and (d), neither of which appear to apply here. *See*
26 RPC 1.2(c) (providing that a lawyer may expressly limit the scope of representation, with the client’s informed consent) and (d) (“A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent[.]”).

1 Intervenor’s Crossclaim go forward.” *Soto Palmer*, Dkt. #109 at 2; *see also id.* at 4 (“Intervenor’s
2 counsel represents that *Garcia* will be voluntarily dismissed once it is clear that this Court will
3 allow Intervenor’s Fourteenth Amendment Crossclaim to proceed in this case.”); *id.* at 6
4 (“Intervenor’s counsel reiterates its representation that *Garcia* will be voluntarily dismissed once
5 it is clear that the Court will allow Intervenor’s Fourteenth Amendment Crossclaim to
6 proceed.”). That pleading was signed by Mr. Stokesbary. *Id.* at 7.

7 But in his deposition Mr. Garcia flatly denied authorizing his counsel to make these
8 representations. Hughes Decl., Ex. 2 [Garcia Excerpts] at 47:8-12; 50:2-17. To the contrary, Mr.
9 Garcia testified that it was extremely important to him to see this lawsuit to completion. *Id.* at
10 47:16-48:2, 50:12-14. Counsel’s representations regarding voluntary dismissal of Mr. Garcia’s
11 suit without Mr. Garcia’s consent further highlight the potential conflict between Mr. Garcia and
12 his counsel and merit further inquiry by the respective courts.

13 **2. Counsel’s efforts to plead a crossclaim against the wishes of the *Soto Palmer***
14 **Intervenor**

15 It appears that Mr. Stokesbary and Holtzman Vogel also failed to abide by their clients’
16 wishes when they attempted to advance the crossclaim in the *Soto Palmer* matter identical to
17 Mr. Garcia’s claims in the *Garcia* matter. *See* RPC 1.2 (“[A] lawyer shall abide by a client’s
18 decisions concerning the objectives of representation and, as required by Rule 1.4 [governing a
19 lawyer’s duty to communicate with their client], shall consult with the client as to the means by
20 which they are to be pursued.”). The proposed crossclaim was contrary to the stated objectives
21 of the *Soto Palmer* Intervenor-Plaintiffs, both of whom testified that they had no desire to modify
22 the enacted map. *Compare Soto Palmer* Dkt. #103 (Amended Complaint with Proposed
23 Crossclaim) with *Soto Palmer* Dkt. #127 at 1-2; Dkt. #127-1 at 111:10-12; Dkt. #127-2 at
24 21:1-11 (intervenor’s deposition testimony).

1 Counsel's misplaced attempt to reconcile their clients' disparate positions by advancing
2 identical claims in both lawsuits only underscores the potentially irreconcilable conflict
3 between their clients.

4 **3. Lack of communication with Mr. Garcia**

5 Finally, RPC 1.4 governs a lawyer's obligations to communicate with their client. Among
6 other things, it requires a lawyer to "(1) promptly inform the client of any decision or
7 circumstance with respect to which the client's informed consent . . . is required by these Rules;
8 (2) reasonably consult with the client about the means by which the client's objectives are to be
9 accomplished; [and] (3) keep the client reasonably informed about the status of the matter." RPC
10 1.4(a)(1)-(3). As Comment 1 succinctly explains: "Reasonable communication between the
11 lawyer and the client is necessary for the client effectively to participate in the representation."

12 According to Mr. Garcia's deposition, between filing his Complaint in the Spring of 2022
13 and receiving a subpoena from the *Soto Palmer* Plaintiffs approximately a week before his
14 deposition, Mr. Garcia had not spoken to Mr. Stokesbary, with the possible exception of a single
15 letter five or six months prior. Hughes Decl., Ex. 2 at 97:20-98:7; 103:25-104:14. As a result of
16 this lack of communication, Mr. Garcia did not know that he had an expert, had not reviewed
17 the expert's report, and did not even know about the approaching trial date in his case. *Id.* at
18 105:5-106:4. This lack of communication is another factor the respective Courts may want to
19 consider in evaluating whether counsel is able adequately to represent the interests of Mr. Garcia
20 and the *Soto Palmer* Intervenors in this litigation.

21 **IV. CONCLUSION**

22 The government therefore respectfully requests that, at the Courts' earliest convenience,
23 the Courts conduct inquiries to assure that counsel are in compliance with the Washington Rules
24 of Professional Conduct.

1 DATED this 14th day of February, 2023.

2
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13 *Attorney for Defendant State of Washington*

14 I certify that this memorandum contains 4,189 words,
15 in compliance with the Local Civil Rules.

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 14th day of February, 2023 at Seattle, Washington

s/ Andrew R.W. Hughes
ANDREW R.W. HUGHES, WSBA No. 49515
Assistant Attorney General

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