

Chapter 11
The Practice of Law
(Last Updated: April 2013)

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Chapter 11.A

Unauthorized Practice of Law Criminal Provision

(Last Updated: April 2013)

7-101 Unauthorized practice of law; penalty.

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Except as provided in section 7-101.01, no person shall practice as an attorney or counselor at law, or commence, conduct or defend any action or proceeding to which he is not a party, either by using or subscribing his own name, or the name of any other person, or by drawing pleadings or other papers to be signed and filed by a party, in any court of record of this state, unless he has been previously admitted to the bar by order of the Supreme Court of this state. No such paper shall be received or filed in any action or proceeding unless the same bears the endorsement of some admitted attorney, or is drawn, signed, and presented by a party to the action or proceeding. It is hereby made the duty of the judges of such courts to enforce this prohibition. Any person who shall violate any of the provisions of this section shall be guilty of a Class III misdemeanor, but this section shall not apply to persons admitted to the bar under preexisting laws.

RULES GOVERNING THE UNAUTHORIZED PRACTICE OF LAW

Article 1

STATEMENT OF INTENT

Every jurisdiction in the United States recognizes the inherent right of individuals to represent themselves in legal matters. In contrast, the privilege of representing others in our system is regulated by law for the protection of the public, to ensure that those who provide legal services to others are qualified to do so by education, training, and experience and that they are held accountable for errors, misrepresentations, and unethical practices.

Nonlawyers may be untrained and inexperienced in the law. They are not officers of the courts, are not accountable for their actions, and are not prevented from using the legal system for their own purposes to harm the system and those who unknowingly rely on them.

The following rules are promulgated by the Nebraska Supreme Court pursuant to its inherent authority to define and regulate the practice of law in this state. The purpose of the rules is to protect the public from potential harm caused by the actions of nonlawyers engaging in the unauthorized practice of law.

Article 2

DEFINITIONS AND SUBSTANTIVE PROVISIONS

2.1 General Definition

The “practice of law,” or “to practice law,” is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person which require the knowledge, judgment, and skill of a person trained as a lawyer. This includes, but is not limited to, the following:

2.1.1 Giving advice or counsel to another entity or person as to the legal rights of that entity or person or the legal rights of others for compensation, direct or indirect, where a relationship of trust or reliance exists between the party giving such advice or counsel and the party to whom it is given.

2.1.2 Selection, drafting, or completion, for another entity or person, of legal documents which affect the legal rights of the entity or person.

2.1.3 Representation of another entity or person in a court, in a formal administrative adjudicative proceeding or other formal dispute resolution process, or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

2.1.4 Negotiation of legal rights or responsibilities on behalf of another entity or person.

2.1.5 Holding oneself out to another as being entitled to practice law as defined herein.

2.2 Other Definitions

2.2.1 Definition of “Nonlawyer”

The term “nonlawyer” means any person not duly licensed or otherwise authorized to practice law in the State of Nebraska. The term also includes any entity or organization not authorized to practice law by specific rule of the Supreme Court whether or not it employs persons who are licensed to practice law.

2.2.2 Definition of “Entity”

The term “entity” means a sole proprietorship, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, two or more persons having a joint or a common interest, or any other legal or commercial entity.

2.2.3 Definition of “Organization”

The term “organization” means two or more entities characterized by common administrative and functional structure or common ownership and/or control.

2.3 General Prohibition

No nonlawyer shall engage in the practice of law in Nebraska or in any manner represent that such nonlawyer is authorized or qualified to practice law in Nebraska except as may be authorized by published opinion or court rule.

2.4 Exceptions and Exclusions

Whether or not they constitute the practice of law, the following are not prohibited:

2.4.1 Title insurance companies authorized to do business in the State of Nebraska and their licensed agents, real estate rental agencies, licensed real estate brokers and their affiliated licensees, and employees of such entities, preparing certain documents that would normally involve the practice of law subject to the following:

(a) The transaction involved is merely incidental to their lawful business as a title insurance company or licensed agent thereof, rental agency, real estate broker, or affiliated licensees of a real estate broker.

(b) The transaction arises in the usual course of business for the title insurance company issuing title insurance, the rental agency as agent for the lessor or the lessee, the broker who is the listing or selling broker, or the real estate licensee affiliated with the broker.

(c) Licensed real estate brokers and their affiliated licensees, as agents for the seller and/or buyer, may prepare purchase agreements and contracts of sale.

(d) Real estate rental agencies representing the lessor and/or lessee may prepare residential, commercial, or farm leases.

(e) In closing a real estate sale, licensed real estate brokers and title insurance companies and their licensed agents may prepare deeds, releases which do not affect judgment liens, deeds of reconveyance, title affidavits, closing statements, and related documents.

(f) The documents referred to 2.4.1(c), (d), and (e) to be prepared by nonlawyers shall be on standardized forms which may contain various blanks to be filled in, the completion or selection of which does not require the knowledge, judgment, or skill of one trained as a lawyer.

(g) No counsel or advice shall be given with respect to the meaning, validity, or legal effect of the document or regarding the rights and obligations of the parties.

2.4.2 Licensed abstractors preparing or extending abstracts without rendering opinions as to the character of the title. A title insurance company authorized to do business in the State of Nebraska, including its licensed agents, may review public records and specify any curative work or describe conditions which must be fulfilled before it will issue a title insurance policy in connection with a proposed real estate transaction, but may not render opinions, counsel, and advice to others regarding the marketability or status of titles.

2.4.3 Nonlawyers appearing in a representative capacity before an administrative tribunal or agency, subject to the following:

(a) A nonlawyer may appear in a representative capacity before a federal administrative tribunal or agency to the extent permitted by such tribunal or agency.

(b) A nonlawyer who is an employee, member, or officer of an entity or organization may represent such entity or organization before an administrative tribunal or agency of the State of Nebraska, or a political subdivision of the State of Nebraska, if all of the following conditions are met:

(1) The tribunal, agency, or political subdivision permits representation of parties by nonlawyers;

(2) The nonlawyer employee, member, or officer is specifically authorized by the entity or organization to appear before the tribunal, agency, or political subdivision on its behalf;

(3) Such representation is not the primary duty of the nonlawyer employee, member, or officer to the entity or organization, but is secondary to other duties relating to the management or operation of the entity or organization;

(4) The nonlawyer employee, member, or officer does not receive separate or additional compensation (other than reimbursement for costs) for such representation;

(5) The representation does not involve a claim that the tribunal, agency, or political subdivision's action or the action of another person is illegal as a matter of law or unconstitutional; and

(6) The Nebraska Evidence Rules as applicable in the district courts do not apply to the administrative proceeding.

(c) A nonlawyer may represent an unrelated party before an administrative agency or tribunal of the State of Nebraska if all of the following conditions are met:

- (1) The agency or tribunal permits representation of parties by nonlawyers;
- (2) The party knows that the representative is a nonlawyer and authorizes such person to appear on behalf of the party in a particular proceeding;
- (3) The representation does not involve a claim that the agency action or action of another person is illegal as a matter of law or unconstitutional;
- (4) The representation does not require the knowledge, judgment, or skill of a lawyer or the preparation of legal briefs; and
- (5) The Nebraska Evidence Rules, as applicable in the district courts, do not apply to the administrative proceeding.

2.4.4 Nonlawyers serving in neutral capacities as mediators, arbitrators, conciliators, or facilitators.

2.4.5 Nonlawyers participating in labor negotiations, employee disciplinary hearings, employment grievances, arbitrations, mediations, or conciliations arising under collective bargaining rights or agreements or state or federal law, provided, however, that the Nebraska Evidence Rules, as applicable in district courts, do not apply or the Federal Rules of Evidence do not apply.

2.4.6 Nonlawyers acting as lobbyists.

2.4.7 Nonlawyers selling legal forms in any format, so long as they do not advise or counsel another regarding the selection, use, or legal effect of the forms.

2.4.8 With respect to tax laws:

(a) Nonlawyers preparing tax returns.

(b) Nonlawyers representing other persons, entities, or organizations before the Internal Revenue Service, the Nebraska Department of Revenue, or any other state or local taxing authority in Nebraska to the extent permitted by such agency or taxing authority.

(c) Nonlawyers practicing before the U.S. Tax Court in conformity with its rules.

2.4.9 Provision of the following services by certified public accountants who are authorized to practice accountancy in the State of Nebraska:

(a) Providing advice on all taxes of any kind.

(b) Issuing financial statements including, but not limited to, attestations, reviews, and compilations, and rendering opinions thereon.

(c) Advising a third party regarding any fact or matter on which the certified public accountants have a statutory or regulatory duty to report to that party.

(d) Preparing, at the request of the client or the client's lawyer, language for proposed inclusion in a legal document being prepared by the client's lawyer.

(e) Providing financial and managerial advice.

Nothing herein shall be deemed to authorize certified public accountants to draft legal documents or provide legal advice except as provided in 2.4.9 (a), (b), (c), and (d).

2.4.10 Nonlawyers providing information about the application of the law to a product or service which the nonlawyer is otherwise lawfully authorized to provide to the public.

2.4.11 Nonlawyer or lawyer employees or members of an entity or organization providing information or education about law, regulations, legal procedures, and compliance issues for the purpose of training other employees or members of the entity or organization.

2.4.12 Nonlawyer employees of an entity or organization preparing legal documents that are incidental to the entity's or organization's business and connected with any transaction in which the entity has a direct, primary, and nonfiduciary interest, or a fiduciary interest required by federal law.

2.4.13 Nonlawyers in the business of serving as fiduciaries, providing beneficiaries and interested persons with advice regarding the meaning, effect, and legal impact of wills, trusts, or plans and preparing documents incidental to the administration thereof.

2.4.14 Nonlawyer employees of an entity or organization engaging in the activities described in 2.1.1, 2.1.2, and 2.1.4 for the sole benefit of the entity or organization.

2.4.15 A nonlawyer entity or organization which employs lawyer employees to perform the activities described in 2.1 for such entity, other entities within the organization, or in the case of privately held entities or organizations, for owners and their families, officers, directors, or employees of the entity or organization.

2.4.16 A nonlawyer entity or organization acting through lawyer employees to the extent such lawyers perform pro bono legal services for nonprofit organizations, low-income clients, or otherwise in the public interest.

2.4.17 A nonlawyer entity or organization acting through lawyer employees providing legal services, without direct payment therefor, to a party other than a party described in 2.4.15, in a manner consistent with the Nebraska Rules of Professional Conduct (including, without limitation, the rules relating to conflicts of interest and fee sharing), so long as the entity or organization has a financial interest in the outcome of the legal services, there is a commonality of purpose between the entity or organization and the third party, and the entity or organization is not otherwise in the business of providing legal services except as provided in these rules.

2.4.18 An entity or an organization in the business of insurance, guarantee or indemnity utilizing a lawyer employee or captive lawyer admitted to the bar in Nebraska or otherwise authorized to practice law in Nebraska to represent its insured, principal, or a noninsured for whom a defense is provided under a reservation of rights, so long as there is a commonality of purpose between the entity or organization and the insured, principal, or noninsured, and the lawyer employee or captive lawyer is able to comply with the Nebraska Rules of Professional Conduct.

2.4.19 An entity or organization in the business of insurance or a self-insured entity or organization may, for the purpose of adjusting claims against it or its insured, prepare certain documents, provide information to, and negotiate with other persons or entities if all of the following conditions are met:

- (a) The transaction involved is incidental to the lawful business of the insurance company or self-insured;
- (b) The transaction arises in the usual course of business of the insurance company or the self-insured;
- (c) The transaction may be carried out by an employee, a third party administrator or agent legally authorized to adjust claims on behalf of the insurance entity or organization or the self-insured; and
- (d) There shall be no charges to any person or entity making a claim against the insurer or self-insured.

2.4.20 Nonlawyer employees and supervised volunteers of nonprofit entities whose primary purpose is assisting domestic violence and sexual assault victims, which nonlawyers may assist victims with the following:

- (a) Distributing pro se forms for harassment and protection orders prescribed by the Nebraska Supreme Court and assisting victims in the preparation of such forms.
- (b) Describing to victims the proceedings under the Protection from Domestic Abuse Act.
- (c) Accompanying victims throughout all stages of proceedings under the Protection from Domestic Abuse Act.
- (d) Attending all court proceedings including, at the judge's discretion, sitting in chambers, sitting at counsel table to confer with victims, or responding to inquiries by the court. However, they shall not examine witnesses, make arguments to the court, or otherwise act in a representative capacity for the victims.

2.4.21 Nonlawyers making any disclosure or advisement, which is required by state or federal law.

2.4.22 Financial institutions and their nonlawyer employees, preparing documents relating to transactions, if all of the following conditions are met:

- (a) The transaction involved is related to the lawful business of the financial institution;
- (b) The transaction arises in the usual course of business for the financial institution;
- (c) The transaction requires the preparation of security agreements, financing statements, assignments, termination statements, effective financing statements, releases, deeds of reconveyance, promissory notes, deeds of trust, mortgages, and similar types of financial documents; and

(d) The documents referred to in 2.4.22(c) to be prepared by nonlawyers shall be on standardized forms which may contain various blanks to be filled in, the completion or selection of which does not require the knowledge, judgment, or skill of one trained as a lawyer.

2.4.23 Nonlawyers engaging in any other activity which the Supreme Court determines, by published opinion or court rule, does not constitute the unauthorized practice of law.

2.5 Nonlawyer Assistants

Nothing in these rules shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with rule 5.3 of the Nebraska Rules of Professional Conduct.

2.6 Certain Organizations

Nothing in these rules shall affect the ability of certain organizations, through the use of lawyers, to offer the services described in article IV of the Supreme Court's rule on Professional Service Corporations or article IV of the Supreme Court's rule on Limited Liability Professional Organizations.

2.7 General Information

Nothing in these rules shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

2.8 Governmental Agencies

Nothing in these rules shall affect the ability of a governmental agency to carry out responsibilities provided by law.

2.9 Professional Standards

Nothing in these rules shall be taken to define or affect standards for civil liability.

Article 3

PROCEDURE

3.1 Jurisdiction

Except as otherwise provided by 3.3.2 herein, the Supreme Court, in the exercise of its inherent jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the State of Nebraska, adopts the following procedures, which shall govern proceedings under these rules concerning the unauthorized practice of law.

3.2 Commission, Creation

3.2.1 There is hereby created a Commission on Unauthorized Practice of Law. The Commission shall be composed of the following members:

(a) Six attorneys licensed to practice law in the State of Nebraska who shall be nominated by the Executive Council of the Nebraska State Bar Association and appointed by the Supreme

Court (one attorney member of the Commission shall be appointed from each of the six Supreme Court districts in the state).

(b) Three laypersons who shall be appointed by the Supreme Court (one layperson shall be appointed from each congressional district in the state).

3.2.2 Members of the Commission shall serve for terms of 3 years, beginning on the first day of the month after the adoption of these rules, provided that at the time of the implementation of these rules, two attorney members and one layperson shall be appointed for 3 years, two attorneys and one layperson for 2 years, and two attorneys and one layperson for 1 year. Every subsequent appointment shall be for a term of 3 years.

3.2.3 The Chief Justice shall appoint one member to chair the Commission.

3.2.4 Membership on the Commission may be terminated by the Supreme Court at its pleasure, and members may resign at any time. Any vacancy shall be filled by the Chief Justice for the unexpired term.

3.2.5 The Commission shall adopt rules providing for the time and place of its meetings, the selection of a member to serve as vice chair, and other officers, and such other rules not in conflict with the rules of the Supreme Court as may be necessary for the conduct of its business.

3.2.6 The Commission by its own rules may sit as three-member panels consisting of two attorneys and one layperson and establish quorums required for its meetings.

3.2.7 Any rules adopted by the Commission shall be subject to approval by the Supreme Court.

3.2.8 Members of the Commission shall be entitled to reimbursement for reasonable expenses incurred in the performance of their official duties.

3.3 Commission, Jurisdiction and Duties

3.3.1 Except as otherwise provided by 3.3.2 herein, the Commission shall have jurisdiction over all complaints made by any person or entity alleging the unauthorized practice of law under these rules. The Commission may inquire into any matter pertaining to the unauthorized practice of law on its own motion.

3.3.2 Nothing contained in these rules shall be construed as a limitation upon the jurisdiction or authority of any court or judge thereof to punish for contempt any person or other entity not having a license from the Supreme Court attempting to practice law within the jurisdiction of said court, nor shall these rules be construed as a limitation upon any civil remedy or criminal proceeding which may otherwise exist with respect to the unauthorized practice of law.

3.3.3 All matters within the jurisdiction of the Commission shall be referred to the Counsel on Unauthorized Practice of Law (CUPL) for screening and investigation. Upon completion of such investigation, the CUPL shall report in writing to the Commission. The Commission may dismiss allegations, request further investigation, offer the respondent the opportunity to enter into a written consent agreement, enter into negotiations with the respondent resulting in a consent decree to be presented to the Supreme Court for approval, or take such other action as may be appropriate under these rules. The Commission, acting through the CUPL, may petition the Supreme Court for such formal relief as it deems appropriate under these rules.

3.3.4 The Commission may, when asked in writing by an interested member of the public or by a member of the Nebraska State Bar Association, issue advisory opinions regarding the unauthorized practice of law as defined and regulated by the Supreme Court. The purpose of such advisory opinions shall be to inform the public and the bar as to what activities violate these rules but shall not be construed as binding the Supreme Court in carrying out its duty of regulating and defining the practice of law.

3.3.5 The Supreme Court hereby appoints the Executive Director of the Nebraska State Bar Association as Secretary of the Commission.

3.4 Counsel, Appointment and Duties

3.4.1 There shall be a Counsel on Unauthorized Practice of Law (CUPL), who shall be a member of the Nebraska State Bar Association.

3.4.2 The CUPL shall be an employee of the Nebraska State Bar Association, which shall fund the operations of the office of the CUPL.

3.4.3 The CUPL shall perform for the Commission all duties as required by these rules.

3.4.4 The CUPL shall investigate all matters within the jurisdiction of the Commission in accordance with procedures adopted by the Commission and shall perform the following duties:

(a) Maintain records of all matters coming within the jurisdiction of the Commission.

(b) Secure facilities for the administration of proceedings under these rules and receive and file all requests for investigation and complaints concerning matters within the jurisdiction of the Commission.

(c) Employ such staff, including investigative and clerical personnel, subject to the approval of the Commission, as may be necessary to carry out the duties of the office.

(d) Perform such other duties as the Commission or the Supreme Court may require.

3.5 Investigation; Consideration by Commission

3.5.1 All complaints regarding the unauthorized practice of law under these rules shall be filed with the CUPL. All complaints received by any Commission member, the Commission secretary, or by any other person shall be transmitted forthwith to the CUPL. All complaints regarding the unauthorized practice of law shall be received, screened, and investigated by the CUPL, who shall, upon completion of his or her investigation, make a written report of the investigation, findings, and recommendation for disposal to the Commission. The CUPL may determine that the conduct in question does not constitute the unauthorized practice of law and recommend to the Commission that the complaint be dismissed. If the CUPL determines that the conduct constitutes the unauthorized practice of law, the CUPL shall recommend appropriate remedial action to the Commission.

3.5.2 In connection with an investigation by the CUPL, the Commission, through its chair or a chair of a designated panel thereof, may issue subpoenas and subpoenas duces tecum to compel

the attendance of the respondent and other witnesses in the production of pertinent books, records, papers, documents, or evidence to the CUPL.

3.5.3 Any person subpoenaed to appear and give testimony or to produce materials, or any person having been sworn to testify and who refuses to answer any proper question, may be cited for contempt in proceedings instituted by the Commission in the Supreme Court pursuant to these rules.

3.5.4 The CUPL, or such other persons designated by the CUPL to conduct investigations, shall have the power to administer oaths and affirmations and to take and have transcribed the testimony and evidence of witnesses.

3.5.5 Upon the report of the investigation by the CUPL, the Commission, or a designated panel thereof, shall make an independent judgment regarding the investigation. It may dismiss the matter and so direct the CUPL to provide written notice of such dismissal to the complainant, if any, and to the respondent. It may determine that the conduct of the respondent merits further proceedings, and in such event, the respondent shall be notified that an investigation is being undertaken and the respondent shall be served personally or by certified mail with findings of the Commission or its panel of activities constituting the unauthorized practice of law and the rules governing the investigation and disposition thereof.

3.5.6 With the service of the findings of the Commission, or at any time thereafter, the Commission may request that a written answer to the findings of the Commission be filed with the CUPL within 20 days following the receipt of the notice and/or the Commission may request the respondent to appear before the CUPL for an informal conference during which the respondent may be offered an opportunity to enter into a written consent agreement or consent decree to refrain from conduct constituting the unauthorized practice of law. The CUPL shall make a written report to the Commission of the answer and/or informal conference.

3.5.7 At any time in the process, the Commission may refer the matter back to the CUPL for further investigation.

3.5.8 At any time after a finding by the Commission that the respondent has been involved in the unauthorized practice of law, the Commission may determine that civil injunction proceedings, as provided under these rules, shall be instituted against the respondent.

3.6 Civil Injunction

3.6.1 If the Commission determines that civil injunction proceedings shall be instituted against a respondent, it shall direct that such proceedings may be commenced in the name of the Commission by a petition filed in the Supreme Court by the CUPL or by a member of the bar appointed by the Supreme Court for the purpose of conducting such proceedings.

3.6.2 The petition shall be in writing and shall set forth the facts and charges in plain language and with sufficient particularity to inform the respondent of the acts complained of. The petition shall specify requested relief which may include injunction and assessment of the costs of the proceeding. The petition shall be served upon the respondent as provided in Neb. Rev. Stat. § 25-505.01 for service of process in civil cases.

3.6.3 The respondent shall file with the Supreme Court within 30 days after service a written answer admitting or denying the matter stated in the petition. Thereafter, the matter shall proceed as provided in the Nebraska Rules of Pleading in Civil Actions.

3.6.4 If no written answer is filed within the time permitted, the Supreme Court, upon its motion or upon the motion of the Commission or its counsel, shall decide the case, granting such relief and issuing such other orders as may be appropriate.

3.6.5 If a written answer raises no question of material fact, any party by motion may request a judgment on the pleadings and the Supreme Court may decide the case as a matter of law, granting such relief and order as may be appropriate.

3.6.6 Upon the Supreme Court's order, questions of fact raised in proceedings under these rules shall be referred to a Hearing Master to be appointed for that purpose.

3.7 Civil Injunction Proceedings; Hearing Master, Powers and Procedure

3.7.1 Civil injunction proceedings before a Hearing Master shall be held in Lincoln, Nebraska. In the discretion of the Hearing Master, the proceedings may be held in the county where the respondent resides or where acts constituting unauthorized practice of law are alleged to have occurred.

3.7.2 The Commission may be represented in a proceeding before the Hearing Master by the CUPL, or by a duly licensed member of the Nebraska State Bar Association appointed by the Supreme Court for such purpose. The Hearing Master shall set a time and place for the hearing and shall dispose of any motions which may expedite the proceedings.

3.7.3 The parties may compel the attendance of witnesses before the Hearing Master by the issuance of subpoenas which shall run in the name of the Supreme Court and may be issued by the Hearing Master or Clerk of the Supreme Court upon the request of a party. All such subpoenas shall be subject to the provisions of Neb. Rev. Stat. § 25-1223 et seq. Failure or refusal, without adequate excuse, to comply with any such subpoena shall be contempt of the Supreme Court and may be punished accordingly.

3.7.4 Unless waived by the parties with the approval of the Hearing Master, the Nebraska Evidence Rules shall be applicable when not inconsistent with these rules. Subject to any limitations in the order of reference, the Hearing Master shall have the powers generally reposed in a "Court" under the Nebraska law. At all hearings before a Hearing Master, witnesses shall be sworn and a complete record made of all proceedings had and testimony taken by a competent court reporter.

3.8 Civil Injunction Proceedings; Report of Hearing Master and Exceptions

3.8.1 After the hearing, the Hearing Master shall report in writing to the Supreme Court in accordance with the order of reference, setting forth findings of fact and recommendations for final disposition of the case. The original record, including a transcript of the proceedings and all exhibits, shall be filed with the report. Promptly after the report is filed with the Supreme Court, the Clerk shall mail copies thereof and a briefing schedule pursuant to 3.8.2, to all parties.

3.8.2 Exceptions to the report of the Hearing Master may be filed with the Supreme Court, by any party, within 30 days after copies of the report have been mailed to the parties. A brief may be

filed in support of such exceptions. Copies of such exceptions, and of any supporting briefs, shall be served upon all other parties. Any other party may file a responsive brief within 20 days after service of a brief in support of exceptions, and the excepting party may thereafter file a reply brief within 10 days after service of the responsive brief.

3.8.3 A brief of an amicus curiae may be filed only by leave of the Supreme Court granted on motion or by the request of the Supreme Court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support unless the Supreme Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.

3.9 Civil Injunction Proceedings; Determination by Supreme Court

3.9.1 After de novo review of the proceedings before the Hearing Master, and upon consideration of any exceptions and briefs, the Supreme Court may adopt the report or modify or reject it in whole or in part and shall determine as a matter of law whether the respondent has been engaged in the unauthorized practice of law. If the Supreme Court finds that the respondent was engaged in the unauthorized practice of law, the Supreme Court may enter an order enjoining the respondent from further conduct found to constitute the unauthorized practice of law and make such further orders as it may deem appropriate, including restitution and the assessment of costs.

3.9.2 Nothing in these rules shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of the proceeding in order to prevent public harm.

3.10 Contempt Proceedings

3.10.1 Noncompliance with any order issued by the Supreme Court regarding the unauthorized practice of law shall be contempt of the Supreme Court punishable as provided in Neb. Rev. Stat. §§ 25-2121 through 25-2123, inclusive.

3.10.2 If the Commission determines that contempt proceedings shall be instituted against a respondent or the Supreme Court directs the Commission to institute such action, such proceedings may be commenced in the name of the Commission by an application filed in the Supreme Court by the CUPL or by a member of the Nebraska State Bar Association in good standing appointed by the Supreme Court for the purpose of conducting such proceedings.

3.10.3 The application shall allege facts indicating that the respondent has previously been enjoined by the Supreme Court from engaging in the unauthorized practice of law and is in willful disobedience of the order of injunction of the Supreme Court by continuing to engage in the same conduct held to be the unauthorized practice of law in that order, and shall contain a prayer for the issuance of a contempt citation.

3.10.4 Upon the filing of an application, the Supreme Court may issue an order directing the respondent to show cause in writing why the respondent should not be held in contempt of the Supreme Court for the willful disobedience of the order and injunction of the Supreme Court.

3.10.5 If an order to show cause is issued, it shall be served upon the respondent, together with a copy of the application, and the citation shall specify the time for response. If a response is filed, the Supreme Court may appoint a Hearing Master to resolve disputed issues of fact.

3.11 General Provisions; Qualifications of Hearing Master; Access to Information Concerning Proceedings Under These Rules

3.11.1 A Hearing Master to whom matters are referred pursuant to these rules shall be a person who is duly licensed to practice law in Nebraska and in good standing with the Nebraska State Bar Association.

3.11.2 All proceedings conducted in the Supreme Court pursuant to these rules shall be public proceedings.

3.11.3 Except as otherwise provided by these rules or by order of the Supreme Court, all proceedings conducted pursuant to these rules prior to the filing of a petition in the Supreme Court shall be confidential, and the records of the Commission shall be confidential and shall not be made public unless and until such a petition is filed. Any person who violates this provision may be subject to punishment for contempt of the Supreme Court.

3.11.4 The pendency, subject matter, and status of the proceedings conducted pursuant to these rules may be disclosed by the CUPL to any of the following:

- (a) An agency authorized to investigate the qualifications of persons for admission to practice law;

- (b) A lawyer discipline enforcement agency;

- (c) Any person or agency requesting such information, provided that the respondent has waived confidentiality and the request is within the scope of the waiver; or

- (d) Any person appointed by the CUPL to assist in the prosecution of the alleged unauthorized practice of law.

Provided, however, 3.11.4 shall not be construed to prohibit the Commission from reporting the subject matter and disposition of a proceeding conducted pursuant to these rules for advisory purposes pursuant to 3.3.4.

3.11.5 Except as otherwise authorized by order of the Supreme Court, a request for confidential information shall be denied unless the request is made by any of the following:

- (a) An agency authorized to investigate the qualifications of persons for admission to practice law;

- (b) An agency authorized to investigate the qualifications of persons for government employment;

- (c) An agency authorized to investigate allegations of unauthorized practice of law;

- (d) An agency authorized to investigate the qualifications of judicial candidates; or

- (e) A lawyer discipline enforcement agency.

3.11.6 If any one of the above-enumerated agencies requests confidential information and has not received a written authorization from the respondent permitting such agency to obtain confidential information, the Commission shall give written notice to the respondent that disclosure of confidential information has been requested. In addition, the Commission shall send to the respondent a copy of any information which the Commission proposes to release to the requesting agency. The Commission shall inform the respondent that the information indicated shall be released to the requesting agency at the end of 20 days after notice of the request was mailed unless the respondent obtains an order from the Supreme Court restraining such disclosure. Among the factors which the Supreme Court will consider in determining whether to restrain such disclosure is whether the requesting agency will accord confidentiality to the requested information.

3.11.7 If a judicial nominating commission of the State of Nebraska requests confidential information, it shall be furnished promptly and the CUPL shall give written notice to the respondent that specified confidential information has been so disclosed.

3.11.8 A respondent may be represented by counsel at any stage of proceedings conducted under these rules.

3.12 Immunity

Persons performing official duties under the provisions of these rules, including, but not limited to, the Commission, the CUPL and his or her staff, members of the Nebraska State Bar Association appointed to assist in the prosecution of alleged unauthorized practice of law, and Hearing Masters shall be immune from suit for all conduct in the course of their official duties.

Adopted October 10, 2007; effective January 1, 2008.

Nebraska Rules of Professional Conduct

Nebraska Rules of Professional Conduct

Effective for Conduct Occurring On or After September 1, 2005

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PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.3. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

[22] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

RULE 1.0 TERMINOLOGY

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation or a member of an association authorized to practice law.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer or support person from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer or support person is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

COMMENT

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud

[5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2(b), 1.6(a) and 1.7(b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (n) and (b). Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see paragraph (n).

Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.11, 1.12 or 1.18. The definition, as well as Comments [9] and [10] to this rule, also generally apply to the screening of support persons pursuant to Rule 1.9(e)(2).

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Article 1 – Client-Lawyer Relationship

RULE 1.1 COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, preparation and judgment reasonably necessary for the representation.

COMMENT

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what

kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency, a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(b).

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

COMMENT

Allocation of Authority Between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified

in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Agreements Limiting Scope of Representation

[5] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[6] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[7] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions

[8] Paragraph (c) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[9] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[10] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[11] Paragraph (c) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (c) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (c) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[12] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

RULE 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

COMMENT

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's

affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).

RULE 1.4 COMMUNICATIONS

(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 1.0(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.**

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COMMENT

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating With Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations – depending on both the importance of the action under

consideration and the feasibility of consulting with the client – this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation, a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

RULE 1.5 FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;**
- (3) the fee customarily charged in the locality for similar legal services;**
- (4) the amount involved and the results obtained;**
- (5) the time limitations imposed by the client or by the circumstances;**
- (6) the nature and length of the professional relationship with the client;**
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and**
- (8) whether the fee is fixed or contingent.**

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or**
- (2) a contingent fee for representing a defendant in a criminal case.**

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;**
- (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and**
- (3) the total fee is reasonable.**

(f) Upon reasonable and timely request by the client, a lawyer shall provide, without charge, an accounting for fees and costs claimed or previously collected. Such an accounting shall include at least the following information:

(1) Itemization of all hourly charges, costs, interest assessments, and past due balances.

(2) For hourly rate charges, a description of the services performed and a notation of the person who performed those services. The description shall be of sufficient detail to generally apprise the client of the nature of the work performed.

COMMENT

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes Over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent the client from committing a crime or to prevent reasonably certain death or substantial bodily harm;**
- (2) to secure legal advice about the lawyer's compliance with these Rules;**
- (3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or**
- (4) to comply with other law or a court order.**

(c) The relationship between a member of the Nebraska State Bar Association Committee on the Nebraska Lawyers Assistance Program or an employee of the Nebraska Lawyers Assistance Program and a lawyer who seeks or receives assistance through that committee or that program shall be the same as that of lawyer and client for the purposes of the application of Rule 1.6.

COMMENT

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. A lawyer may disclose information relating to the representation necessary to prevent a client from committing a crime. Paragraph (b)(1) also recognizes the overriding value of life and physical integrity and

permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. For example, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(2) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[8] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(3) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[9] A lawyer entitled to a fee is permitted by paragraph (b)(3) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[10] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(4) permits the lawyer to make such disclosures as are necessary to comply with the law.

[11] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(4) permits the lawyer to comply with the court's order.

[12] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[13] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(4). In exercising the discretion conferred by

this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the nature of the future crime, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(c), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Withdrawal

[14] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). After withdrawal, the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise permitted by Rule 1.6. Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

Acting Competently to Preserve Confidentiality

[15] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

[16] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client

[17] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

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

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

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
- (2) the representation is not prohibited by law;**
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and**
- (4) each affected client gives informed consent, confirmed in writing.**

COMMENT

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: (1) clearly identify the client or clients; (2) determine whether a conflict of interest exists; (3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and (4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person

the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child,

sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances, it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases, the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that

there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, 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. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, 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. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(b).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

COMMENT

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(e) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(c), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).

Financial Assistance

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be

discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(e) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship

presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

RULE 1.9 DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

(d) A lawyer shall not knowingly allow a support person to participate or assist in the representation of a current client in the same or a substantially related matter in which another lawyer or firm with which the support person formerly was associated had previously represented a client:

(1) whose interests are materially adverse to the current client; and

(2) about whom the support person has acquired confidential information that is material to the matter, unless the former client gives informed consent, confirmed in writing.

(e) If a support person, who has worked on a matter, is personally prohibited from working on a particular matter under Rule 1.9(d), the lawyer or firm with which that person is presently associated will not be prohibited from representing the current client in that matter if:

(1) the former client gives informed consent, confirmed in writing, or

(2) the support person is screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the support person and the firm have a legal duty to protect.

(f) For purposes of Rules 1.9(d) and (e), a support person shall mean any person, other than a lawyer, who is associated with a lawyer or a law firm and shall include but is not necessarily limited to the following: law clerks, paralegals, legal assistants, secretaries, messengers and other support personnel employed by the law firm. Whether one is a support person is to be determined by the status of the person at the time of the participation in the representation of the client.

COMMENT

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental

considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought. As to the application of paragraph (d), the support person shall be considered to have acquired confidential information that is material to the matter unless the support person demonstrates otherwise.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(e). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

COMMENT

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2] - [4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. See Rule 1.9(d) through (f). Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(k) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed consent, see Rule 1.0(e).

[7] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[8] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

RULE 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

COMMENT

[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(e) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the

advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13 Comment [6].

[6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

[7] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

RULE 1.12 FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

COMMENT

[1] This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2) and C of the Model Code of Judicial Conduct provide that a part-time judge, judge pro tempore or retired judge recalled to active service, may not "act as a lawyer in any proceeding in which he served as a judge or in any other proceeding related thereto." Although phrased differently from this Rule, those Rules correspond in meaning.

[2] Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0(e) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.3.

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

RULE 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, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

COMMENT

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations.

"Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(f), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Often, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter or get another legal opinion; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(b)(1)–(4). Under paragraph (c), the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the

violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rule 1.6(b)(1) may permit the lawyer to disclose confidential information. In such circumstances, Rule 1.2(c) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances, the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated

associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

COMMENT

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as 5 or 6 years of age, and certainly those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the

guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(c).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on

behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

RULE 1.15 SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of 5 years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

COMMENT

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. See, e.g., ABA Model Financial Recordkeeping Rule.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust

account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall 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.**

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;**
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;**
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;**
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;**
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;**
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or**
- (7) other good cause for withdrawal exists.**

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

COMMENT

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(b) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if

the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client Upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

RULE 1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

- (a) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;**
- (b) The seller gives written notice to each of the seller's clients regarding:**
 - (1) the proposed sale;**
 - (2) the client's right to retain other counsel or to take possession of the file; and**
 - (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.**

If a client cannot be given notice, that matter shall not be included in the sale and the sale otherwise shall be unaffected and the seller shall comply with the requirements of Rule 1.16 for withdrawal from representation.

- (c) The fees charged clients shall not be increased by reason of the sale.**

COMMENT

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Sale of Entire Practice or Entire Area of Practice

[2] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[3] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[4] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[5] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[6] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[7] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[8] This Rule applies to the sale of a law practice of a deceased, disabled, retiring or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[9] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[10] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

RULE 1.18 DUTIES TO PROSPECTIVE CLIENT

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee there from; and

(ii) written notice is promptly given to the prospective client.

COMMENT

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a).

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the

matter. See Rule 1.0(e) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(k) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

Article 2 – Counselor

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

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] 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, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. 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.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a

client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] 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 if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

RULE 2.2 EVALUATION FOR USE BY THIRD PERSONS

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

COMMENT

Definition

[1] An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be

made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duties Owed to Third Person and Client

[3] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[4] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily, a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this Rule. See Rule 4.1.

Obtaining Client's Informed Consent

[5] Information relating to an evaluation is protected by Rule 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. See Rule 1.6(a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rules 1.6(a) and 1.0(e).

Financial Auditors' Requests for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

RULE 2.3 LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the

lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

COMMENT

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

Article 3 – Advocate

RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

COMMENT

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[3] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

RULE 3.2 EXPEDITING LITIGATION

In the lawyer's representation of a client, a lawyer shall not file a suit, assert a position, conduct a defense, delay litigation or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

COMMENT

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

RULE 3.3 CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

COMMENT

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(c) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(c), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done — making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(c). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus, the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing

documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;**
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;**
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;**
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;**
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a**

witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

COMMENT

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 4.2.

RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

(a) A lawyer shall not:

(1) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(2) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(3) communicate with a juror or prospective juror after discharge of the jury if:

(i) the communication is prohibited by law or court order;

(ii) the juror has made known to the lawyer a desire not to communicate; or

(iii) the communication involves misrepresentation, coercion, duress or harassment; or

(4) engage in conduct intended to disrupt a tribunal.

(b) A lawyer shall reveal promptly to the court improper conduct by a venireperson or a juror, or by another toward a venireperson or a juror or a member of his or her family, of which the lawyer has knowledge.

COMMENT

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

RULE 3.6 TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

COMMENT

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.

[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

- (3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
- (5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
- (6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See Rule 3.8(f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

RULE 3.7 LAWYER AS WITNESS

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;**
- (2) the testimony relates to the nature and value of legal services rendered in the case; or**
- (3) disqualification of the lawyer would work substantial hardship on the client.**

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

COMMENT

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule

[2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9 and 1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0(b) for the definition of "confirmed in writing" and Rule 1.0(e) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;**
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;**
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;**

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing *pro se* with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

RULE 3.9 ADVOCATE IN NONADJUDICATIVE PROCEEDINGS

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

COMMENT

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure. See Rules 3.3(a) through (c), 3.4(a) through (c) and 3.5.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by Rules 4.1 through 4.4.

Article 4 – Transactions With Persons Other Than Clients

RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

COMMENT

Misrepresentation

[1] A lawyer is 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. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

[3] Under Rule 1.2(c), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(c) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

COMMENT

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounseled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

RULE 4.3 DEALING WITH UNREPRESENTED PERSON

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

COMMENT

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(d).

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

RULE 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

COMMENT

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

[2] Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

[3] Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

Article 5 – Law Firms and Associations

RULE 5.1 RESPONSIBILITIES OF A PARTNER OR SUPERVISORY LAWYER

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of

other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

RULE 5.2 RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

COMMENT

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise, a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or**
- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

COMMENT

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

- (1) an agreement by a lawyer with the lawyer's firm, partner or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;**
- (2) a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;**
- (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and**
- (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.**

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;**
- (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or**
- (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.**

COMMENT

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

**RULE 5.5 UNAUTHORIZED PRACTICE OF LAW;
MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or**
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.**

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;**
- (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;**
- (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or**
- (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.**

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

COMMENT

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1 and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign or international law.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

RULE 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

COMMENT

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

RULE 5.7 RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

COMMENT

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2) unless the lawyer takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances, the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the Rule cannot be met. In such a case, a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers' engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation and patent, medical or environmental consulting.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also Rule 8.4 (Misconduct).

Article 6 – Public Service

RULE 6.1 VOLUNTARY PRO BONO SERVICE

A lawyer should aspire to render pro bono legal services. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

COMMENT

[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

[6] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro

bono services. A lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[7] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[8] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide pro bono legal services.

[9] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

RULE 6.2 ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;**
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or**
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.**

COMMENT

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause, a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

RULE 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

COMMENT

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

RULE 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

COMMENT

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefited.

**RULE 6.5 NONPROFIT AND COURT-ANNEXED
LIMITED LEGAL SERVICES PROGRAMS**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

COMMENT

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(b). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

Article 7– Information About Legal Services

RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

COMMENT

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

[4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

RULE 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

COMMENT

[1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign

language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Lawyers are not permitted to pay others for channeling professional work. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for prospective clients. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of prospective clients; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not refer prospective clients to lawyers who own, operate or are employed by the referral service.)

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with prospective clients, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or**
- (2) has a family, close personal or prior professional relationship with the lawyer.**

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or**
- (2) the solicitation involves coercion, duress or harassment.**

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client shall include the words "This is an advertisement" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, and in the subject line of an email, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2). "This is an advertisement" shall appear in type size at least as large as the print of the address and shall be located in a conspicuous place on the envelope or postcard.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

COMMENT

[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who

may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

[6] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[7] The requirement in Rule 7.3(c) that certain communications be marked "This is an advertisement" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[8] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through

memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a).

RULE 7.4 COMMUNICATION OF FIELDS OF PRACTICE

- (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.**
- (b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.**
- (c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.**
- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:**
 - (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and**
 - (2) the name of the certifying organization is clearly identified in the communication.**

COMMENT

[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty" or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

RULE 7.5 FIRM NAMES AND LETTERHEADS

- (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if:**
 - (1) the trade name includes the name of at least one of the lawyers practicing under said name. A law firm consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm;**

(2) the trade name does not imply a connection with a government entity, with a public or charitable legal services organization or any other organization, association or institution or entity, unless there is, in fact, a connection; and

(3) the trade name is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

COMMENT

[1] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

Article 8 – Maintaining the Integrity of the Profession

RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

COMMENT

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

RULE 8.2 JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

COMMENT

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

COMMENT

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

RULE 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. Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law or

(g) willfully refuse, as determined by a court of competent jurisdiction, to timely pay a support order, as such order is defined by Nebraska law.

COMMENT

[1] Lawyers are subject to discipline when they 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, as when they request or instruct

an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(c) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

RULE 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

COMMENT

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other

lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See, Rules 6 and 22, *ABA Model Rules for Lawyer Disciplinary Enforcement*. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

DISCIPLINARY RULES

PREFACE

The Nebraska Supreme Court has the inherent power and duty to prescribe standards of conduct for attorneys admitted to practice law in Nebraska; to determine what constitutes grounds for the discipline of attorneys: to disbar, suspend, censure, or reprimand for cause attorneys whose failure to comply with the obligations of a member of the bar has been duly established.

Attorneys are a part of the judicial system of the State and are officers of its courts. A license to practice law confers no vested right, but is a conditional privilege, revocable for cause.

The discipline of attorneys is for the protection of the public, the profession, and the administration of justice.

DEFINITIONS

The following definitions shall apply wherever used in these rules:

ASSOCIATION The Nebraska State Bar Association.

ATTORNEY A person duly admitted to the practice of law in the State of Nebraska by the Court, under the laws of the State of Nebraska, and who is by his or her oath required to abide by its laws, including the laws of its subdivisions and the Nebraska Rules of Professional Conduct.

Amended July 13, 2005, effective September 1, 2005.

CLERK The Clerk of the Supreme Court and Court of Appeals of the State of Nebraska.

COMPLAINANT Any person who makes a Grievance.

COMPLAINT A written statement prepared by the Counsel for Discipline as a result of an investigation of a Grievance and filed with the appropriate Committee on Inquiry.

CONDITIONAL ADMISSION OF GUILT

A process whereby a member charged can conditionally admit his or her guilt pending final approval by the Court.

COUNSEL FOR DISCIPLINE

The person employed by the Nebraska Supreme Court to fulfill the duties and responsibilities set out in these rules, and it shall include that person's staff to whom he or she shall have the power to delegate the authority to make the required investigations and such other duties as he or she may assign to the staff. It shall also include the person appointed by the Court to serve as special prosecutor in a disciplinary case.

Amended Dec. 13, 1995.

COURT The Supreme Court of the State of Nebraska.

DISABILITY INACTIVE STATUS

Suspension from the practice of law due to a disability or substance abuse problem.

EXECUTIVE COUNCIL

The Executive Council of the Nebraska State Bar Association.

FORMAL CHARGE A written statement prepared by the Counsel for Discipline at the direction of the Committee on Inquiry or the Disciplinary Review Board.

GRIEVANCE Any written statement made by any person alleging conduct on the part of a member which appears, in the judgment of the Counsel for Discipline, to have merit, and, if true, would constitute a violation of the member's oath, the Nebraska Rules of Professional Conduct, or these rules; allegations of misconduct not appearing in the judgment of the Counsel for Discipline to have merit are not deemed a Grievance under these rules.

Amended February 28, 2001; amended July 13, 2005, effective September 1, 2005.

INQUIRY	A review of the investigative file of the Counsel for Discipline by a Committee on Inquiry Panel subsequent to the filing of a Complaint. An Inquiry is not a hearing and witnesses shall not be called and evidence shall not be introduced. At the request of the Inquiry Panel, the Counsel for Discipline may appear and participate in the proceeding.
MEMBER	A member of the Nebraska State Bar Association of any class of membership.
OATH	The oath of office taken by an attorney or member at the time of his or her admission to practice as provided by Neb. Rev. Stat. § 7-104, or as the same may be hereafter amended.
PRIVATE REPRIMAND	A reprimand of a member by the Committee on Inquiry of the appropriate Judicial District or the Disciplinary Review Board which shall be in writing, signed by the Chairperson and Vice Chairperson, and directed to the member by United States certified mail, return receipt requested, but shall not be made public.
RELATOR	The Counsel for Discipline of the Nebraska Supreme Court.
RESPONDENT	A member charged with a violation of his or her oath, or the Nebraska Rules of Professional Conduct, or these rules. <small>Amended July 13, 2005, effective September 1, 2005.</small>
RULES	These rules as adopted by the Court or as the same may be hereafter amended.
RULES OF PROFESSIONAL CONDUCT	The Nebraska Rules of Professional Conduct as adopted by the Court, together with such amendments thereto as may from time to time be approved by the Court. <small>Adopted July 13, 2005, effective September 1, 2005.</small>
SERIOUS CRIME	Any felony or any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

RULE 1. JURISDICTION

(A) Every attorney admitted to practice in the State of Nebraska is subject to the exclusive disciplinary jurisdiction of the Court.

(B) Nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt.

(C) Time limitations for the Committees on Inquiry and Disciplinary Review Board as set forth herein are directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any discipline or disability investigation or proceeding.

(D) Incumbent judges shall not be subject to the jurisdiction of the Counsel for Discipline.

(E) Every attorney admitted to practice in the State of Nebraska shall pay a disciplinary assessment for each calendar year from January 1 to December 31, payable in advance on or before January 1 of each year, in such amount as may be fixed by the Court. The first disciplinary assessment shall be due on or before January 1, 2001. The disciplinary assessment shall be paid to the Treasurer of the Association and shall be used to defray the costs of disciplinary administration and enforcement as established by these rules. Different classifications of disciplinary assessments may be established for Active Jr., Active Sr., Active, Inactive, Military, and Emeritus members as those membership classes are defined in Article III of the Rules Creating, Controlling, and Regulating Nebraska State Bar Association. Members newly admitted to the practice of law in the State of Nebraska shall not pay a disciplinary assessment for the remainder of the calendar year in which they are admitted.

(F) Members who fail to pay the disciplinary assessment shall be subject to suspension from the practice of law as provided in Article III(5) of the Rules Creating, Controlling, and Regulating Nebraska State Bar Association.

RULE 2. JURISDICTION OF DISCIPLINARY DISTRICTS

The Disciplinary District which shall have jurisdiction over a member shall be any District, as defined in Rule 7, in which the member maintains an office, or the District in which his or her conduct under investigation occurred. If the member resides in Nebraska but does not maintain an office in Nebraska, jurisdiction shall be in the District of the member's residence. If the member does not maintain an office or a residence in Nebraska and the conduct under investigation did not occur in Nebraska, the Disciplinary Review Board shall determine which District shall have jurisdiction and shall assign the investigation to the Counsel for Discipline.

RULE 3. GROUNDS FOR DISCIPLINE

(A) The license to practice law in this State is a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of the conditional privilege to practice law to conduct himself or herself at all times, both professionally and personally, in conformity with the standards imposed upon members as conditions for that privilege.

(B) Acts or omissions by a member, individually or in concert with any other person or persons, which violate the Nebraska Rules of Professional Conduct as adopted by the Court, the oath, or the provisions of these rules, shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise.

Rule 3(B)(1) amended July 13, 2005, effective September 1, 2005.

RULE 4. TYPES OF DISCIPLINE

(A) Misconduct shall be grounds for:

- (1) Disbarment by the Court; or
- (2) Suspension by the Court; or
- (3) Probation by the Court in lieu of or subsequent to suspension, on such terms as the Court may designate; or
- (4) Censure and reprimand by the Court; or
- (5) Temporary suspension by the Court; or
- (6) Private reprimand by the Committee on Inquiry or Disciplinary Review Board.

(B) The Court may, in its discretion, impose one or more of the disciplinary sanctions set forth above.

Rule 4A(3) and 4B amended June 16, 2004.

RULE 5. THE ADVISORY COMMITTEE

(A) The Court shall appoint a committee to be known as the Advisory Committee which shall consist of one member from each Supreme Court Judicial District in effect at the time of the adoption of these rules and as may hereafter be changed, a member at large to be Chairperson, and a member at large to be Vice Chairperson.

(B) When the Advisory Committee is first appointed, one member shall be appointed for a term of one year, one member for two years, one member for three years, one member for four years, one member for five years, one member for six years, and one member for seven years. The first person appointed Vice Chairperson shall serve for seven years. Thereafter the full regular term of each member of the Committee shall be for seven years and no member shall serve full regular consecutive terms, but may be reappointed after a lapse of one year; provided, however, that at no time shall the terms of the Chairperson and Vice Chairperson expire at the same time.

(C) In the interest of continuity and efficiency of operation the Court may deviate from time to time from the above designated terms of membership. Members of the Advisory Committee shall not receive compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties.

(D) The Advisory Committee shall have the following powers and duties:

(1) In its discretion, render to a member upon his or her written request an advisory opinion or an interpretation of the Nebraska Rules of Professional Conduct regarding anticipatory conduct on the part of the member. A member requesting an opinion from the Advisory Committee shall prepare and submit with his or her request a statement of the specific facts upon which the opinion is requested and a memorandum directing the attention of the Committee to the pertinent Nebraska Rules of Professional Conduct and relevant case authority. The Chairperson of the Advisory Committee may waive this requirement in appropriate cases.

(2) Make appropriate arrangements, through its Chairperson, for publication and dissemination of such advisory opinions as the Committee deems of general interest to the members.

Rule 5(D)(1) amended February 22, 1996; Rule 5(A) and (B) amended July 23, 1997; Rule 5(D)(1) amended July 13, 2005, effective September 1, 2005.

RULE 6. THE DISCIPLINARY REVIEW BOARD

(A) The Court shall appoint a committee to be known as the Disciplinary Review Board which shall consist of one member from each Supreme Court Judicial District in effect at the time of the adoption of these rules and as may hereafter be changed, one member of which shall be designated as Vice Chairperson; a member at large to be Chairperson; and three residents of Nebraska, not members, representing the public at large. The Vice Chairperson shall act as Chairperson if the designated Chairperson is absent or disqualified from acting in a particular proceeding. Neither the Chairperson nor the Vice Chairperson shall be nonlawyers.

(B) When the Disciplinary Review Board is first appointed, one member shall be appointed for a term of one year, one member for two years, one member for three years, one member for four years, one member for five years, one member for six years, and one member for seven years. Thereafter the full regular term shall be for seven years and no member shall serve full regular consecutive terms, but may be reappointed after a lapse of one year. Initially, one representative of the public shall be appointed for a term of two years, one for a term of three years, and one for a term of four years. Thereafter the full regular term of the representative of the public shall be for three years. Representatives of the public may serve full regular consecutive terms.

(C) In the interest of continuity and efficiency of operation the Court may deviate from time to time from the above designated terms of membership. Any member who is participating in a disciplinary proceeding which is pending at the time the member's term expires shall continue to serve as a member of the Board, with respect to such proceeding, until final disposition of that proceeding. Such a member will serve in addition to the seven regular members of that Board. Members of the Disciplinary Review Board shall not receive compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties.

(D) The Disciplinary Review Board shall have the following powers and duties:

(1) If necessary, because of disqualification or unavailability, to direct that the Complaint be referred to some other Committee on Inquiry, in which case the Committee on Inquiry to which it is so referred shall have full power and jurisdiction to the same extent and in like manner as the Committee which had original jurisdiction.

(2) Assume jurisdiction of and determine a matter to the same extent and with like power as a Committee on Inquiry when directed by the Court.

(3) Review motions to quash subpoenas.

(4) Review a dismissal of a Grievance by the Counsel for Discipline upon application of the Complainant filed within thirty days of receipt of notice of the dismissal. After review of the investigative file of the Counsel for Discipline, the Disciplinary Review Board may affirm the dismissal of the Grievance, direct the Counsel for Discipline to further investigate, or direct the Counsel for Discipline to file a Complaint with the appropriate Committee on Inquiry. Should the Disciplinary Review Board reverse the Counsel for Discipline's decision to dismiss a Grievance, a special prosecutor shall be appointed to prosecute the action.

(5) Review the private reprimand issued by the Committee on Inquiry in conformity to Rule 9(H) upon written application of the member against whom the reprimand was issued or the Counsel for Discipline filed within thirty days of issuance of the reprimand. After review of the investigative

file of the Counsel for Discipline, the Disciplinary Review Board may affirm the issuance of the private reprimand, reverse the issuance of the private reprimand and dismiss the complaint, or determine that there are reasonable grounds for discipline of the Respondent and that a public interest would be served by the filing of a Formal Charge.

(6) Review a dismissal of a Complaint by the Committee on Inquiry in conformity with Rule 9(H) upon written application of the Counsel for Discipline filed within thirty days of receipt of the notice of dismissal. After review of the investigative file of the Counsel for Discipline, the Disciplinary Review Board may affirm the dismissal of the Complaint; determine that there are reasonable grounds for discipline of the Respondent but that no public interest would be served by the filing of a Formal Charge and, thereupon, prepare and issue a private reprimand; or determine that there are reasonable grounds for discipline of the Respondent and that a public interest would be served by the filing of a Formal Charge. If the Disciplinary Review Board determines that a Formal Charge is warranted, the Board shall direct the Counsel for Discipline to file the same with the Clerk.

(7) A review provided for in subparagraphs (4), (5), or (6) immediately above shall be completed within sixty days after it is received by the Disciplinary Review Board unless the Chairperson of the Disciplinary Review Board, because of the extent of the record or the complexity of the issues, determines that additional time is necessary.

(E) Reviews provided for in paragraph (D)(4), (5), or (6) of this rule shall be conducted by a panel appointed by the Chairperson of the Board. The panel shall be composed of three members of the Disciplinary Review Board. One member of each panel shall be a nonlawyer. The Chairperson of the Board shall appoint one lawyer member of the panel to serve as Chairperson of the panel.

Rule 6(A) amended November 14, 1996; Rule 6(D)4 amended November 22, 2000.

RULE 7. DISTRICT COMMITTEE ON INQUIRY

(A) (1) The Court shall appoint a Committee on Inquiry in each of six districts. For the purposes of these rules, such districts shall be coterminous with the Supreme Court Judicial District of the same number in effect at the time of the adoption of these rules, and as hereafter may be changed. The Committees on Inquiry shall contain the following number of members, one-third of whom shall be nonlawyers: districts 1 and 2 shall contain 12 members and districts 3, 4, 5, and 6 shall contain 6 members.

(2) The members of each committee shall be residents of, or have their principal law office in, the district in which they serve as herein described; provided, however, that members of the Committee on Inquiry for district 4 may reside in any part of Douglas County, and members of the Committee on Inquiry for district 2 may reside in Sarpy County.

(3) Members of the Committees on Inquiry as they exist as of the date of adoption of this rule amendment shall continue to serve out their terms on such committees; however, when those terms expire, replacement for such members shall be in accordance with the boundaries and residence requirements of these rules.

(B) The Court shall designate one member as Chairperson and two members as Vice Chairpersons, either of whom may serve as Chairperson in the event of the disqualification or unavailability of the Chairperson. Neither the Chairperson nor the Vice Chairpersons shall be nonlawyers.

(C) When a Committee on Inquiry is first appointed, one-sixth of its members shall be appointed for a term of one year, one-sixth for a term of two years, one-sixth for a term of three years, one-sixth for a term of four years, one-sixth for a term of five years, and one-sixth for a term of six years and thereafter all regular

terms shall be six years. No member of the Committee shall serve consecutive terms but may, however, be reappointed after a lapse of one year.

(D) In the interest of continuity and efficiency of operation the Court may deviate from time to time from the above designated terms of membership. Any member who is participating in a disciplinary proceeding which is pending at the time the member's term expires shall continue to serve as a member of the Committee, with respect to such proceeding, until final disposition of that proceeding. Such a member will serve in addition to the regular members of that Committee. Members of the Committee shall not receive compensation for their services but may be reimbursed for travel and other expenses incidental to performance of their duties.

(E) The Committee on Inquiry shall have the following powers and duties:

- (1) Review the investigations and Complaint presented to it by the Counsel for Discipline.
- (2) Dismiss the Complaint upon being satisfied it is without foundation and merit.
- (3) Issue a private reprimand if the Complaint indicates a matter not appropriate for a Formal Charge.
- (4) Make application to the Court requesting that a member be placed on disability inactive status or for an immediate temporary suspension of a member in conformity with Rule 11 or Rule 12.

(F) An Inquiry regarding a Complaint filed with a Committee on Inquiry by the Counsel for Discipline shall be conducted by an Inquiry Panel composed of three members of the Committee appointed by the Chairperson of the Committee, one of whom shall be the Chairperson or a Vice Chairperson of the Committee, who shall serve as Chairperson of the Inquiry Panel. One member of each Inquiry Panel shall be a nonlawyer.

Rule 7(A)(2) amended November 23, 1994; Rule 7(A)(2) amended May 30, 1996; Rule 7(A)(2) amended November 12, 1998; Rule 7(A)(1)-(3) amended March 24, 2004..

RULE 8. COUNSEL FOR DISCIPLINE

(A) The Counsel for Discipline shall be appointed by the Nebraska Supreme Court and his or her appointment and tenure of office shall be on such terms and for such period as may be designated by the Court. The Counsel for Discipline shall not be permitted to engage in the private practice of law except the Court may agree to a reasonable period of transition after his or her appointment.

(B) The Counsel for Discipline shall have the following powers and duties:

- (1) Review, investigate, or refer for investigation all matters of alleged misconduct called to his or her attention by Grievance or otherwise. The Counsel for Discipline may initiate Grievances.
- (2) Notify a member in writing that he or she is the subject of a Grievance and furnish the member a copy thereof within fifteen days of receipt of the Grievance.
- (3) Dismiss a Grievance if, in his or her judgment, it is without foundation and merit.
- (4) Refer members to Attorney Assistance Programs under appropriate circumstances.
- (5) Prepare a Complaint and file it with the appropriate Committee on Inquiry if, in his or her judgment, there is sufficient evidence to substantiate such Complaint.

(6) Confer with any Committee on Inquiry prior to dismissal of a Grievance or preparation of a Complaint if he or she is in doubt as to the proper disposition of the matter.

(7) Provide research services for the Advisory Committee.

(8) Maintain records as follows:

(a) Records of correspondence received by the Counsel for Discipline but not classified as a Grievance shall be maintained for a period of three years, after which time they may be destroyed.

(b) Records of Grievances which have resulted in referral to Attorney Assistance Programs shall be maintained for a period of three years, after which time they may be destroyed.

(c) Records of Grievances which have been dismissed by the Counsel for Discipline for lack of foundation and merit shall be maintained for a period of three years, after which time they may be destroyed.

(d) Records of Grievances in which Complaints have been filed and then dismissed shall be maintained for a period of five years after final disposition of the complaint, after which time they may be destroyed.

(e) Records of Grievances against attorneys that have resulted in a reprimand by the Committee on Inquiry or the Disciplinary Review Board or probation, a reprimand, censure, suspension, or disbarment of the attorney shall be maintained until the death of the attorney, after which time they may be destroyed.

(9) Make a semiannual summary report to the Court of all disciplinary matters for each six-month period. Such report shall include the following information:

(a) Number of members complained against.

(b) The general nature of the Grievances.

(c) The disposition or status thereof and such other matters as the Court may, from time to time, request.

(d) A copy of the portion of the report relating to each Committee on Inquiry shall be submitted to the Chairperson of that Committee on Inquiry.

(10) Assist the Court in any disciplinary matter then pending before the Court, if requested.

RULE 9. PROCEDURE

Committee on Inquiry - Counsel for Discipline - Disciplinary Review Board

(A) All allegations of misconduct must be filed with the office of the Counsel for Discipline. All allegations of misconduct received by any other person shall be transmitted forthwith to the Counsel for Discipline. Upon receipt of information indicating an abuse of alcohol or drugs by a member or the existence of a mental health or gambling problem, the Counsel for Discipline shall release such information to the Nebraska Lawyers Assistance Program. The release of this information shall not be a violation of the confidentiality requirements of Rule 18.

(B) All investigations, whether upon allegations of misconduct or otherwise, shall normally be initiated by the Counsel for Discipline.

(C) When it appears to the Counsel for Discipline that allegations of misconduct do not have merit or that the allegations, if true, would not constitute grounds for discipline, he or she may decline to investigate and shall so advise the Complainant in writing with a proper explanation. In making a determination, the Counsel for Discipline may make such preliminary inquiry regarding the underlying facts as he or she deems appropriate. This may include requests for information from the Complainant and the member. All doubts shall be resolved in favor of an investigation. A declination by the Counsel for Discipline to investigate and dismissal pursuant to this rule are not appealable to the Committee on Inquiry or the Disciplinary Review Board.

(D) If it appears to the Counsel for Discipline that allegations of misconduct may have merit and, if true, would constitute grounds for discipline, he or she shall notify the member against whom the allegations are directed that the member is the subject of a Grievance, and within fifteen days of its receipt furnish the member a copy thereof by certified mail, return receipt requested, at the member's last known address.

(E) Upon receipt of notice of a Grievance from the Counsel for Discipline, the member against whom the Grievance is directed shall prepare and submit to the Counsel for Discipline, in writing, within fifteen working days of receipt of such notice, an appropriate response to the Grievance, or a response stating that the member refuses to answer substantively and explicitly asserting constitutional or other grounds therefor. For good cause, the Counsel for Discipline may grant additional time for the filing of a response.

(F) If, upon conclusion of any investigation, the Counsel for Discipline determines there are not reasonable grounds for discipline of a member against whom a Grievance is directed, he or she shall dismiss the Grievance and shall so advise the Complainant in writing with a proper explanation. The Counsel for Discipline shall further advise such Complainant that an appeal may be taken to the Disciplinary Review Board pursuant to Rule 14(A).

(G) If, upon conclusion of any investigation, the Counsel for Discipline determines there are reasonable grounds for discipline of a member against whom a Grievance is made, he or she shall reduce the Grievance to a Complaint specifying with particularity the facts which constitute the basis thereof and the grounds for discipline which appear to have been violated. The Complaint shall be forwarded by the Counsel for Discipline to the member by regular mail at the member's last known address. The member shall have ten working days from the date the Complaint is mailed to submit an additional written explanation of the facts or circumstances for inclusion in the Counsel for Discipline's investigative file. The Complaint and either the investigation file, or a copy thereof, shall then be immediately forwarded to the proper Committee on Inquiry.

(H) Upon receipt of the Complaint and file from the Counsel for Discipline, the Chairperson of the Committee on Inquiry shall appoint an Inquiry Panel pursuant to Rule 7(F) which shall within thirty days review the Complaint and either:

(1) Determine that the Complaint, if true, would not constitute grounds for discipline and dismiss the Complaint.

(2) Determine that there are not reasonable grounds for discipline of the Respondent, and dismiss the Complaint.

(3) Determine that there are reasonable grounds for discipline of the Respondent but that no public interest would be served by the institution of a Formal Charge. The Panel thereupon shall prepare and issue to the Respondent a private reprimand which shall be made a permanent part of the file in the office of the Counsel for Discipline, and this reprimand shall be received as evidence in any subsequent disciplinary proceeding against the Respondent only after a finding of misconduct in the subsequent disciplinary proceeding.

(4) Determine that there are reasonable grounds for discipline of the Respondent and that a public interest would be served by the filing of a Formal Charge. The Counsel for Discipline shall thereafter prepare and sign Formal Charges for filing with the Court. The Formal Charge shall be made in the name of the State of Nebraska on the relation of the Counsel for Discipline of the Nebraska Supreme Court.

(I) The Respondent or the Counsel for Discipline may appeal the actions of the Inquiry Panel to the Disciplinary Review Board in conformity with Rules 6(D)(5) and (6) and 14(D).

Rule 9(C) and (D) amended March 13, 1998; Rule 9(A) and (B) amended February 28, 2001.

RULE 10. PROCEDURE

Nebraska Supreme Court

(A) Proceedings for discipline of members shall be considered civil in their nature and for the purpose of protecting the public and the good name of the members, and may be instituted against any person who has been licensed to practice in the courts of the State of Nebraska.

(B) Proceedings for discipline of members may be instituted and prosecuted in the name of the State of Nebraska on the relation of the Counsel for Discipline of the Nebraska Supreme Court without leave of court.

(C) Proceedings shall be initiated by the Counsel for Discipline filing a Formal Charge setting forth the grounds thereof with reasonable definiteness. The Formal Charge shall be filed with the Clerk who shall then docket the cause as an original proceeding in the Court. No initial filing fee shall be charged in these actions.

(D) Upon the filing in the Court of a Formal Charge as contemplated and provided for by these rules against any member, Counsel for Discipline shall prosecute the Formal Charge against the Respondent. If the Court is advised by Counsel for Discipline by written notice or by a motion filed by the Respondent that, for reasons specified therein, a conflict exists or Counsel for Discipline cannot otherwise carry out such duty, the Court within ten days, in its discretion, may appoint any member to prosecute the Formal Charge.

(E) The Counsel for Discipline or any member so appointed may within thirty days, in his or her discretion, prepare and file an amended Formal Charge. Within five days after the time fixed for filing an amended Formal Charge, service shall be made upon the Respondent as provided for in paragraph (G) below.

(F) If the Counsel for Discipline or the member so appointed has in his or her possession evidence which, in his or her opinion, warrants any additional Charge or Charges, the Counsel for Discipline or the member so appointed may incorporate such additional Charge or Charges in the Formal Charge and prosecute the same, despite the fact that they may not have been presented to the Committee on Inquiry or the Disciplinary Review Board.

(G) Service upon the Respondent may be had by serving upon him or her a copy of the Formal Charge or any amended Formal Charge and notice of the time for answer in the same manner as service of summons is had in civil proceedings in the district courts of the State, in which case it shall be proved by the official return of the officer making such service. Service shall be deemed to have been waived if the Respondent shall sign a written receipt for a copy of the Formal Charge and notice. Service may likewise be had by the mailing by the Clerk of a certified copy of said Formal Charge and notice by certified mail, return receipt requested, to the Respondent at his or her last known address; and in that event the official return card of the United States mail, signed by the Respondent, acknowledging receipt of the envelope containing the

copy of said Formal Charge and notice, shall be deemed sufficient proof of service. In the event that it shall appear by affidavit that personal service cannot be had upon the Respondent and that letters to the Respondent's last known address are returned unclaimed, service may be had upon the Respondent by publication of notice for two successive weeks in some legal newspaper published in the county wherein the Respondent last resided. Such notice shall state that Formal Charge for disciplinary action has been filed in the Court against the Respondent and shall give the date of filing and the time within which Respondent is required to answer.

(H) The answer of the Respondent shall be filed within thirty days after service of summons and a copy of the Formal Charge or within thirty days after service by publication, as herein provided, shall have been completed. For good cause shown the Court may extend the time to answer.

(I) If no answer be filed within the time limited therefor, or if the answer raises no issue of fact or of law, the matter may be disposed of by the Court on its own motion or on a motion for judgment on the pleadings, but in either case there shall be an opportunity for oral argument prior to entry of an order of disbarment by the Court.

(J) Upon the filing of an answer raising an issue of fact, the Court shall refer the matter to a member as referee. It shall be the duty of such referee to fix an early date for hearing, notify the relator and the Respondent or their respective attorneys of record, and without delay to hear such testimony as may be introduced under the pleadings. The referee shall have all powers of a referee in civil actions in the courts of Nebraska. The referee shall observe the rules of evidence, discovery rules, and motion practice applicable in civil actions in the district courts of the State of Nebraska. The standard of proof in hearings before the referee shall be clear and convincing. The referee shall have a competent reporter present who shall take in shorthand or by any mechanical device and transcribe in typewriting all oral evidence adduced at the hearing had before the referee. The referee may continue the hearing from time to time as circumstances may require, but shall not delay his or her proceedings unless justice and equity so require. The referee shall make a written report within four months of the referee's appointment, unless extended by order of the Court, stating his or her findings of fact and recommendations. The typewritten record of the proceedings shall have attached to it all of the exhibits offered at the hearing, and shall be certified by the referee. The referee shall promptly transmit to the Court the referee's report, together with such record so certified, and shall transmit a copy of the report to the Respondent.

(i) When the transcription of oral evidence, exclusive of exhibits, exceeds 250 pages in length, the reporter shall prepare one or more write-protected 3½-inch computer disks containing the transcription of proceedings. Such disks shall be formatted in Microsoft Word, or, if such formatting cannot be accomplished, in ASCII text. An adhesive label shall be affixed to each disk legibly identifying the case caption, docket and page or case numbers, disk number (1 of 2, etc.), the format utilized, and the name of the reporter. The first line of the label shall be left blank. Such disk(s) shall be transmitted to the Court by the referee at the same time that the typewritten record of proceedings and any attached exhibits are filed in the Court. Such disk(s) shall be for the exclusive use of the Supreme Court and authorized court personnel. Any reporter who lacks the technological capability to comply with this requirement shall include in the transcription of oral evidence a separate certificate so stating.

(ii) In addition to the written report of the referee, he or she shall also prepare one or more write-protected 3½-inch computer disks containing the report. Such disks shall be formatted in Microsoft Word, or, if such formatting cannot be accomplished, in ASCII text. An adhesive label shall be affixed to each disk legibly identifying the case caption, docket and page or case numbers, disk number (1 of 2, etc.), the format utilized, and the name of the referee. The first line of the label shall be left blank. The referee shall transmit such disk(s) to the Court at the same time that the referee's written report is filed in the Court. Such disk(s) shall be for the exclusive use of the Supreme Court and authorized court personnel. Any referee who lacks the technological capability to comply with this requirement shall include in the report a separate certificate so stating.

(K) Upon the filing of an answer raising an issue of law only, the Court may, in its discretion, refer the matter to a member as referee for such action in relation thereto as the Court may by its order of reference direct.

(L) Within ten days after the filing of the report of the referee, any party thereto may file written exceptions to such report. If no exceptions are filed, the Court, in its discretion, may consider the findings final and conclusive, and on motion shall enter such order as the evidence and law require.

(M) If exceptions be filed to the findings or report of the referee, briefs and arguments shall be filed and oral arguments made in the Court as required by the rules of the Court in civil cases. The party filing exceptions to the findings and report of the referee shall serve and file his or her brief within thirty days after the filing of such report and the brief of the adverse party shall be served and filed within thirty days thereafter. The case shall thereupon be placed upon the Court call for hearing.

(N) The Court may disbar, suspend, censure, or reprimand the Respondent, place him or her on probation, or take such other action as shall by the Court be deemed appropriate. All orders of public discipline shall be forwarded by the Clerk to the membership secretary of the Nebraska State Bar Association.

(O) Any party thereto may file a motion for rehearing at any time within twenty days from the filing of the opinion or rendition of the judgment of the Court.

(P) Costs of these actions may be taxed by the Court as the Court shall see fit.

(Q) The Counsel for Discipline shall prosecute any case referred to him or her by the Court for prosecution.

(R) No application for modification of judgment pursuant to Rule 4 of these rules shall be made prior to the expiration of one year after the final order in such proceedings shall have been entered except in cases where the only service upon Respondent has been by publication, and no appearance has been made by Respondent, and except where the application is made under the terms of Neb. Rev. Stat. §§ 25-2001 to 25-2009.

(S) No application for reinstatement from an order of suspension shall be made prior to the expiration of the period of suspension unless otherwise provided by the Court in said order.

(T) No application for reinstatement from an order of disbarment shall be made prior to the expiration of five years after the final order in such proceedings shall have been entered.

(U) A member seeking reinstatement must inform the Counsel for Discipline of all prior discipline taken against him or her in any jurisdiction.

(V) Copies of every such application shall be furnished the Relator, the Counsel for Discipline, the current Chairperson of the Committee on Inquiry for the District which exercised original jurisdiction, and the Chairperson of the Disciplinary Review Board, any one or more of whom may appear and resist such application. Any other persons may likewise appear upon obtaining leave of the Court and make such resistance. Within twenty days thereafter, the Counsel for Discipline and the District Committee on Inquiry, by its Chairperson, shall each file a written statement recommending the application be granted or denied and the reasons therefor. The Court may deny such application without a hearing if justice and equity require it. If the application or the showing in resistance thereto shall require the taking of evidence, the matter may be referred to a referee and the proceedings shall be the same as in the case of original disciplinary proceedings.

Rule 10(H) amended October 30, 1996; Rule 10(D) amended September 11, 2002; Rule 10(J) amended November 14, 2002; Rule 10(B), (C), (I) and (P) amended August 27, 2003; Rule 10(J) amended August 31, 2005.

RULE 11. DISABILITY INACTIVE STATUS

Incompetency or Incapacity

(A) Upon a Grievance that a member is incapacitated from continuing the practice of law by reason of physical or mental illness, or because of addiction to drugs or intoxicants, the appropriate Committee on Inquiry, with the assistance of the Counsel for Discipline, may prepare and submit to the Court an application requesting that the member be placed on disability inactive status. Such application shall be signed by the Chairperson of such Committee, and shall set forth grounds clearly indicating a temporary suspension of the member is necessary and proper.

(B) Upon the filing of such application the Court shall provide for notice to the member who shall have the right of representation by counsel selected by the member or appointed by the Court, if it should appear to the Court the member may not be competent to do so. Notice shall be by service of the application by any means permitted with respect to service of formal charges under Rule 10(G), except that service may not be accomplished by publication.

(C) The Court shall take or direct, consistent with fundamental fairness and due process, such action as it deems necessary and proper to determine whether the member is incapacitated from continuing the practice of law, including a direction for an examination of the member by such qualified medical experts as the Court shall designate at the cost of the member.

(D) If, upon due consideration of the matter, the Court concludes the member is incapacitated from continuing to practice law, it shall enter an order placing the member on disability inactive status on the grounds of such disability until further order of the Court, and any pending disciplinary proceeding against the member shall be held in abeyance. Members on disability inactive status shall not be required to pay annual dues or disciplinary assessments to the Nebraska State Bar Association.

(E) If, in the course of a proceeding under this rule, the Court shall determine the member is not incapacitated from practicing law, it shall take such action as it deems proper and advisable, including a direction for the resumption of any disciplinary proceedings being held in abeyance.

(F) Any member on disability inactive status under the provisions of this rule shall be entitled to apply for reinstatement by filing with the Court an application supported by clear and convincing evidence the member's disability has been removed and the member is capable of resuming the practice of law. Upon such application, the Court may take or direct such actions as it deems necessary and proper to determine if the disability of such member has been removed, including a direction for an examination of the member by such qualified medical experts as the Court shall designate. The Court may direct the expense of such an examination shall be paid by the member.

(G) The filing of an application for reinstatement by a member suspended under this rule shall be deemed to constitute a waiver of any physician-patient privilege with respect to any treatment of the member during the period of his or her disability. The member shall be required to disclose the name of every psychiatrist, psychologist, physician, and hospital or institution by whom, or in which, the member has been examined or treated since his or her placement on disability inactive status, and the member shall furnish to the Court written consent and waiver to each such person and institution to furnish such information and records as requested by court-appointed medical experts.

Rule 11(B) amended September 11, 2002; Rule 11(H) deleted September 11, 2002.

RULE 12. TEMPORARY SUSPENSION

Continuing Damage to the Public and Members, Nonpayment of Support Orders, or Conviction of a Crime

(A) Upon a Grievance that a member is engaging in conduct that, if allowed to continue until final disposition of disciplinary proceedings, will cause serious damage to the public and members, or upon certification or notice that a member is delinquent on or is failing to pay a court-ordered obligation under a support order, or when a member has been convicted of a serious crime, the appropriate Committee on Inquiry with the assistance of the Counsel for Discipline may prepare and submit to the Court an application for the temporary suspension of the member from the practice of law until final disposition of any pending disciplinary proceedings. Such application shall be signed by the Chairperson of the Committee and shall set forth grounds clearly indicating that a temporary suspension of the member is necessary and proper.

(B) Upon the filing of such application for temporary suspension, the Court shall provide for notice to the member who shall have the right of representation by counsel selected by the member or appointed by the Court, if it should appear to the Court the member may not be competent to do so. Notice shall be by service of the application by any means permitted with respect to service of formal charges under Rule 10(G).

(C) The Court shall take or direct, consistent with fundamental fairness and due process, such action as it deems necessary and proper to determine if the member should be suspended pending the final disposition of the disciplinary proceedings.

(D) If, upon due consideration of the matter, the Court concludes the member should be suspended pending final disposition of the disciplinary proceedings, it shall enter an order suspending the member until the further order of the Court.

(E) Any member suspended under the provisions of this rule shall be entitled to apply for termination of the temporary suspension by filing with the Court an application supported by clear and convincing evidence that the member is no longer engaging in conduct which, if allowed to continue until final disposition of any disciplinary proceedings, would cause serious continuing damage to the public and members, and that there is no reasonable likelihood that such conduct will recur.

(F) Any temporary suspension order issued under this rule shall automatically terminate at the final disposition of the disciplinary proceedings or upon application to and order of the Court that the reason for the temporary suspension of the member no longer exists.

Rule 12 amended September 9, 1999; Rule 12(B) amended September 11, 2002.

RULE 13. CONDITIONAL ADMISSION OF GRIEVANCE, COMPLAINT, OR FORMAL CHARGE

(A) At any time prior to the Clerk's entering a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of a Grievance or of a Complaint in exchange for a stated form of consent judgment of discipline as to all or a part of the Grievance or Complaint pending against him or her as determined to be appropriate by the Counsel for Discipline and the appropriate Committee on Inquiry; such conditional admission is subject to approval by the Court. The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way.

(B) At any time after the Clerk has entered a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of the Formal Charge in exchange

for a stated form of consent judgment of discipline as to all or part of the Formal Charge pending against him or her as determined to be appropriate by the Counsel for Discipline or any member appointed to prosecute on behalf of the Counsel for Discipline; such conditional admission is subject to approval by the Court. The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way.

(C) No publicity will be given to any such conditional admission of a Grievance, Complaint, or Formal Charge described in (A) and (B) above until approval of the conditional admission by the Court.

Rule 13(A) - (C) amended January 24, 2002.

RULE 14. RIGHT OF APPEAL

(A) Complainant may appeal to the Disciplinary Review Board a dismissal of the Grievance by the Counsel for Discipline. Allegations of misconduct dismissed by the Counsel for Discipline pursuant to Rule 9(C) are not appealable to the Committee on Inquiry or the Disciplinary Review Board. Except on a showing of good cause, notice of appeal shall be made in writing to the Chairperson of the Disciplinary Review Board within thirty days after notification of such dismissal. Said Board may then take such action as it deems appropriate.

(B) In cases where the Counsel for Discipline prepares a Complaint and files it with the appropriate Committee on Inquiry pursuant to Rule 9(G), the Counsel for Discipline shall notify the Complainant by mail of the findings of the Committee on Inquiry.

(C) If the Committee on Inquiry Panel dismisses the Complaint pursuant to Rule 9(H), the Counsel for Discipline may appeal the decision to the Disciplinary Review Board. Except on a showing of good cause, notice of appeal shall be made in writing to the Chairperson of the Disciplinary Review Board within thirty days after notification of the dismissal of the Complaint by the Committee on Inquiry. In the event of an appeal, the Chairperson of the Disciplinary Review Board shall obtain from such Committee on Inquiry the Complaint, investigative file of the Counsel for Discipline, and any report prepared by the Committee.

(D) Either the Respondent or the Counsel for Discipline may appeal to the Disciplinary Review Board a reprimand issued to the Respondent by the Committee on Inquiry upon written application filed with the Chairperson of the Disciplinary Review Board within thirty days of issuance of the reprimand. Either the Respondent or the Counsel for Discipline may appeal to the Court the action of the Disciplinary Review Board.

Rule 14(A), (C), and (D) amended Dec. 13, 1995; Rule 14(A) amended February 28, 2001.

RULE 15. VOLUNTARY SURRENDER OF LICENSE

(A) Once a Grievance, a Complaint, or a Formal Charge has been filed, suggested, or indicated against a member, the member may voluntarily surrender his or her license.

(1) The voluntary surrender of license shall state in writing that the member knowingly admits or knowingly does not challenge or contest the truth of the suggested or indicated Grievance, Complaint, or Formal Charge and waives all proceedings against him or her in connection therewith.

(2) A voluntary surrender of license shall not terminate such Grievance, Complaint, or Formal Charge unless an appropriate order is entered by the Court.

Rule 15 amended March 14, 2001.

**RULE 16. NOTIFICATION REQUIREMENTS BY
DISBARRED OR SUSPENDED MEMBER**

(A) Whenever a member is disbarred or suspended from the practice of law or surrenders his or her license under Rule 15 hereof, such member shall:

- (1) Notify in writing all of the member's present clients of such fact, and
- (2) Assist each client in obtaining a member of the client's choice to complete all matters being handled by him or her, and
- (3) Promptly refund all client funds and close all attorney trust accounts if the imposed sanction is greater than a 30-day suspension. A trust account may remain open if, after a reasonable search, the client or clients eligible to received funds cannot be located, and
- (4) Notify in writing all members and nonresident attorneys involved in pending legal or other matters being handled by the member of his or her altered status, and
- (5) Return to the Clerk the member's Nebraska State Bar Association membership card.
- (6) Within thirty days from the date of said disbarment, suspension, or voluntary surrender, file an affidavit with the Court, stating full compliance with the requirements of this rule and shall simultaneously submit evidence of full compliance.
- (7) Every order (judgment) of disbarment or suspension shall direct the Respondent to comply with this Rule 16.
- (8) The Clerk shall notify the Court, in writing, of the compliance or noncompliance of the Respondent with this Rule 16. Noncompliance shall be contempt of court.

Rule 16 amended November 10, 2004.

RULE 17. SUBPOENA POWER

(A) For investigative purposes, the Counsel for Discipline shall be empowered to issue writs of subpoena, including subpoena duces tecum, in the name of the State of Nebraska requiring the attendance and testimony of witnesses and parties and the production of records, books, and documents; to administer oaths to parties and witnesses; to take their sworn testimony or their unsworn statements; and to certify to the Court for appropriate action by the Court any refusal of a witness or party to comply with the requirements of a subpoena or subpoena duces tecum to testify, answer questions, or produce records, books, or documents.

(B) Such subpoena, including subpoena duces tecum described in this rule, may be served by certified mail, return receipt requested, by the Sheriff of any County of the State of Nebraska or by any person authorized by the Counsel for Discipline to do so.

(C) Any Respondent shall have the right to request writs of subpoena, including subpoena duces tecum, in the name of the State of Nebraska, by a written request therefor to the Referee, prior to ten days of any hearing. The Referee, with the assistance of the Clerk, shall, immediately, issue such subpoena or subpoena duces tecum and cause the same to be served in the same manner as provided in paragraph (B) of this rule; provided the testimony and evidence to be produced as a result of said subpoena or subpoena duces tecum shall be reasonably relevant and material to the matters on hearing. With said request the Respondent shall submit the last known address of the witnesses together with the witness and mileage fees for such witnesses in the same amount as are paid for witnesses in the district courts of Nebraska.

(D) Prior to the appointment of a Referee, the Disciplinary Review Board may quash or modify the subpoena if it is unreasonable or oppressive. The Referee, upon appointment, shall assume such authority.

Rule 17B amended November 12, 1997.

**RULE 18. PUBLICITY OF DISCIPLINARY PROCEEDINGS
AND SEQUESTRATION OF WITNESSES**

(A) The hearings, records, or proceedings of the Counsel for Discipline, the Committee on Inquiry, and the Disciplinary Review Board are confidential and shall not be made public except that the pendency, subject matter, and status of an investigation may be disclosed by the Committee on Inquiry involved or the Disciplinary Review Board if

(1) the Respondent has waived confidentiality, either in writing or by public disclosure of information regarding the proceeding; or

(2) the proceeding is based upon conviction of a crime.

(B) Unless the Respondent has waived confidentiality, either in writing or by public disclosure of information regarding the proceedings, willful violation of this rule shall be grounds for discipline.

(C) This rule is not intended to prohibit the exchange of confidential information with other agencies authorized by the Court to receive such information.

(D) The following provisions regarding the confidentiality of various disciplinary pleadings filed in the Supreme Court shall apply:

TYPE OF PLEADING FILED	BECOMES PUBLIC RECORD
(1) Formal Charges.	Upon filing.
(2) Application for Disability Inactive Status based upon competency or incapacity pursuant to Rule 11.	Shall not be made public until status is entered by the Court. If Application is denied, the case remains confidential.
(3) Application for Reinstatement pursuant to Rule 11.	Upon filing.

(4) Application for Temporary Suspension based upon continuing damage to the public or conviction of a serious crime.	Upon filing.
(5) Application for Reinstatement after Temporary Suspension due to Rule 12.	Upon filing.
(6) Conditional Admission of Complaint or Formal Charges.	Remains confidential until the Court approves the Conditional Admission.
(7) Appeal of Disciplinary Review Board decision to issue Private reprimand.	Remains confidential unless Formal Charges are entered with the Court.
(8) Voluntary Surrender of License.	Upon filing.
(9) Application for Reinstatement after Suspension or Disbarment.	Upon filing.

(E) The Counsel for Discipline may release confidential information to the Client Assistance Fund Claims Board of the Nebraska State Bar Association as needed to further the work of the Claims Board. Such information shall not be made public other than as necessary to discharge the duties of the Claims Board.

Rule 18E amended October 31, 2001.

RULE 19. TERMINATION OF DISCIPLINARY PROCEEDINGS

Neither unwillingness nor neglect of the Complainant to sign a Grievance or to assist in the prosecution of the Complaint, nor settlement, compromise, or restitution, shall, in itself, justify termination of any disciplinary proceedings.

RULE 20. RELATED CIVIL OR CRIMINAL LITIGATION

(A) Similarity of the substance of a Grievance, Complaint, or Formal Charge to the material allegations of pending criminal or civil litigation shall not in itself prevent or delay disciplinary proceedings against the member involved in such litigation.

(B) The acquittal of the member on criminal charges or a verdict or judgment in the member's favor in civil litigation involving material allegations similar in substance to a Grievance, Complaint, or Formal Charge shall not in and of itself justify termination of disciplinary proceedings predicated upon the same or substantially the same material allegations.

RULE 21. RECIPROCAL DISCIPLINE

(A) Upon being disciplined in another jurisdiction, a member shall promptly inform the Counsel for Discipline of the discipline imposed. Upon receipt by the Court of appropriate notice that a member has been disciplined in another jurisdiction, the Court may enter an order imposing the identical discipline, or greater or lesser discipline as the Court deems appropriate, or, in its discretion, suspend the member pending the imposition of final discipline in such other jurisdiction.

(B) In the event the discipline imposed in the other jurisdiction has been stayed, the entry of an order pursuant to the provisions of paragraph (A) of this rule shall be deferred until such stay expires.

Rule 21(A) amended June 25, 1997.

RULE 22. IMMUNITY AND PRIVILEGES

(A) Reports of alleged misconduct and Grievances submitted to the Counsel for Discipline, Committees on Inquiry, and the Disciplinary Review Board or testimony with respect thereto are confidential and shall be absolutely privileged and no lawsuit predicated thereon may be instituted.

(B) The Counsel for Discipline, his or her representatives, and members of the Disciplinary Review Board, Committees on Inquiry, and Advisory Committee; the director and any members of the Nebraska Lawyer's Assistance Program; and all others (whether or not members of the Association) whose assistance is requested by any of the foregoing in connection with the enforcement of these rules shall be immune from suit for any conduct in the course of their official duties under these rules.

(C) The Complainant and all witnesses shall be immune from suit for any testimony given in the course of any proceedings under these rules.

RULE 23. EXPENSES

(A) Actual costs and expenses necessarily incurred by the Counsel for Discipline, his or her representatives, the Committee on Inquiry or the Disciplinary Review Board in connection with any investigations or Inquiries, as provided by these rules and incurred prior to the filing of the Formal Charge in the Court, shall be paid by the Office of the Counsel for Discipline. If a private reprimand is issued to a member, the Court may enter judgment in favor of the Office of the Counsel for Discipline, for such costs and expenses upon request of and proof by the Counsel for Discipline.

(B) Upon request of and proof by the Counsel for Discipline, a disciplined member shall be required to reimburse the Office of the Counsel for Discipline for the actual costs and expenses necessarily incurred by the Counsel for Discipline, his or her representatives, the Committee on Inquiry, or the Disciplinary Review Board in connection with any investigations, hearings, or proceedings leading to the imposition of a sanction, if the disciplinary action is heard by the Nebraska Supreme Court. The Court may enter judgment for court costs and costs and expenses approved by the Court.

RULE 24. RULES ARE CUMULATIVE

These rules shall be cumulative and not exclusive.

RULE 25. ELIGIBILITY TO SERVE ON BOARD OR COMMITTEE

In determining eligibility to serve on any board or committee under these rules, an individual may be considered a resident of the district in which the individual either lives or maintains law offices. Provided, however, such offices must be the principal office for such individual and not merely a satellite office.

Rule 25 adopted November 23, 1994.

RULE 26. LAWYERS CONVICTED OF A CRIME

(A) For the purposes of Inquiry of a Complaint or Formal Charges filed as a result of a finding of guilt of a crime, a certified copy of a judgment of conviction constitutes conclusive evidence that the attorney committed the crime, and the sole issue in any such Inquiry should be the nature and extent of the discipline to be imposed.

(B) A lawyer shall promptly notify the Counsel for Discipline if he or she is found guilty of a serious crime and must provide proof of that adjudication.

Rule 26 adopted September 13, 1995.

RULE 27. EFFECTIVE DATE

The amendments to these rules shall become effective on January 1, 2001. Formal Charges under review by the Disciplinary Review Board on the above-mentioned date shall be immediately forwarded and filed with the Clerk. Charges pending before the Committees on Inquiry on the above-mentioned date that have not been the subject of an Inquiry shall proceed in accordance with these rules. Appeals pending before the Committees on Inquiry on the above-mentioned date shall proceed as if under the former rules with the exception that there shall not be an additional appeal to the Disciplinary Review Board.

Disciplinary Rules amended September 27, 1995; Disciplinary Rules amended October 17, 2000, effective January 1, 2001.

RULE 28. APPOINTMENT OF A TRUSTEE

In addition to any of the foregoing procedures within these rules relating to disability inactive status, disbarment, or suspension of an attorney, the following measures may be taken for the protection of client interests:

(A) Appointment of a Trustee. If an attorney (i) has been suspended by an order of the Court placing the member on disability inactive status pursuant to Rule 11; (ii) is shown to be unable to properly discharge his or her responsibilities to clients due to disability, disappearance, death, or abandonment of a law practice and there is no showing that an arrangement has been made for another lawyer to discharge the responsibilities; or (iii) has been disbarred or suspended pursuant to Rule 10 or 12 or has surrendered his or her license under Rule 15 and there has been a failure to comply with Rule 16 client notification requirements, the Court may appoint a lawyer to serve as trustee to inventory the files, sequester client funds, and take whatever other action seems indicated to protect the interests of the clients and other affected parties.

(1) Trustee Bound by Lawyer-Client Privilege. The trustee should be bound by the lawyer-client privilege with respect to the records of individual clients, except to the extent necessary to carry out the order of the Court.

(2) The trustee shall notify in writing all of the present clients of the disbarred or suspended member of the fact of such disbarment or suspension and shall also notify in writing all members and nonresident attorneys involved in pending legal or other matters being handled by the disbarred or suspended member of his or her altered status.

(3) The trustee shall receive compensation for his or her services as established by the Court and may be reimbursed for travel and other expenses incidental to the performance of his or her duties.

Rule 28 adopted September 11, 2002.

NEBRASKA CODE of JUDICIAL CONDUCT

Adopted by order of
The Nebraska Supreme Court
May 28, 1992

Effective September 1, 1992

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PREFACE

At its August 1990 annual meeting, the American Bar Association House of Delegates adopted the ABA Model Code of Judicial Conduct (1990), culminating several years of work by various ABA committees. The Nebraska Supreme Court assigned the task of reviewing the ABA Model Code to the Nebraska Judicial Ethics Advisory Committee. This Nebraska Code of Judicial Conduct (1992) is the result of the committee's work. The advisory committee suggested a number of modifications to the ABA Model Code. The reader must be aware that this Nebraska Code of Judicial Conduct (1992) and the ABA Model Code of Judicial Conduct (1990) are not fully interchangeable.

NEBRASKA CODE OF JUDICIAL CONDUCT

PREAMBLE

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

This Code is intended to establish standards for ethical conduct of judges of this state. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section, and Comments. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Comments, by explanation and example, provide guidance with respect to the purpose and meaning of the Canons and Sections. The Comments are not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations, the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered under specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as to not impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges. However, this Code is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

TERMINOLOGY

Terms explained below are noted with asteriks in the sections where they appear. In addition, the sections where terms appear are referred to after the explanation of each term below.*

APPROPRIATE AUTHORITY

The Nebraska Commission on Judicial Qualifications and the Nebraska Supreme Court Counsel for Discipline. See sections 3D(1) and 3D(2).

Amended July 13, 2005, effective September 1, 2005.

CANDIDATE

A person seeking selection for or retention in judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the secretary of state, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See preamble and sections 5A, 5B, 5C, and 5E.

COURT PERSONNEL

Does not include the lawyers in a proceeding before a judge. See sections 3B(7)(c) and 3B(9).

DE MINIMIS

An insignificant interest that could not raise reasonable question as to a judge's impartiality. See sections 3E(1)(c) and 3E(1)(d).

ECONOMIC INTEREST

Ownership of a legal or equitable interest, however small, or a relationship as officer, director, advisor, or other active participant in the affairs of a party, except that:

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal, or civic organization, or service by a judge's spouse, parent, or child as an officer, director, advisor, or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See sections 3E(1)(c) and 3E(2).

FIDUCIARY

Includes such relationships as personal representative, conservator, attorney in fact, trustee, and guardian. See sections 3E(2) and 4E.

FOURTH DEGREE OF RELATIONSHIP

The following persons are relatives within the fourth degree of relationship: great-great-grandparent, great-uncle or great-aunt, brother, sister, great-great-grandchild, grandnephew or grandniece, or first cousin. See section 3E(1)(d).

IMPARTIALITY

“Impartiality” or “impartial” denotes the condition of being without bias or prejudice in favor of, or against, particular parties or classes of parties, or their representatives, and of maintaining an open mind in considering issues that may come before the judge. See Canon 1, comment; Canon 2, section A and comment; Canon 2, section C and comment; Canon 3, section E(1) and comment; Canon 3, section E(1)(b) comment; Canon 4, section D(1) comment; and Canon 4, section D5(d) comment.

Adopted September 20, 2006.

INDEPENDENCE

“Independence” denotes a judge’s freedom from influence, guidance, or controls other than those established by law. See Canon 1 and comment; Canon 4, section B comment; Canon 4, section C(2) comment; and Canon 5, section A3(a).

Adopted September 20, 2006.

INTEGRITY

“Integrity” denotes probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and comment; Canon 2, section A and comment; Canon 2, section C comment; Canon 4, section B comment; Canon 4, section D(5)(d); and Canon 5A(3).

Adopted September 20, 2006.

JUDGE

Persons subject to this Code as defined in the application section herein.

KNOWINGLY, KNOWLEDGE, KNOWN, or KNOWS

Actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See sections 3D, 3E(1), and 5A(3).

LAW

All court rules adopted by the Nebraska Supreme Court, including the Workplace Harassment Policy and Drug-Free Workplace Policy, as well as statutes, constitutional provisions, and decisional law. See sections 2A, 3A, 3B(2), 3B(7), 4B, 4C, 4D(5), 4F, 4K, 5A(2), 5B(2), 5C(1), and 5D.

Amended Feb. 10, 1999; amended September 20, 2006.

MEMBER OF THE CANDIDATE'S FAMILY

A spouse, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship. See section 5A(3)(a).

MEMBER OF THE JUDGE'S FAMILY

A spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See sections 4D(3), 4E, and 4G.

MEMBER OF THE JUDGE'S FAMILY RESIDING IN THE JUDGE'S HOUSEHOLD

Any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See sections 3E(1) and 4D(5).

NONPUBLIC INFORMATION

Information that, by law, is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentence reports, and statutorily confidential information in other cases. See section 3B(11).

PART-TIME JUDGE

A periodic part-time judge is a judge who serves on a continuing or part-time basis but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. See application section A.

POLITICAL ORGANIZATION

A political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See sections 5A(1), 5B(2), and 5C(1).

REQUIRE

The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See sections 3B(3), 3B(4), 3B(5), 3B(6), 3B(9), and 3C(2).

CANON 1

A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code shall be construed and applied to further that objective.

COMMENT

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

COMMENT

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions in this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity and impartiality is impaired.

At least six factors should be considered in evaluating the appearance of impropriety involved in any activity: (1) The public or private nature of the act when done; (2) the extent to which the conduct is protected as an individual right; (3) the degree of discretion exercised by the judge; (4) whether the conduct is harmful or offensive to others; (5) the degree of respect or lack of respect for the public or individual members of the public that the conduct demonstrates; and (6) the degree to which the conduct is indicative of bias, prejudice, or improper influence.

See, also, comment under section 2C.

B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

COMMENT

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising as to that article to avoid exploitation of the judge's office. As to the acceptance of awards, see section 4D(5)(a) and comment.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request or to correct errors in the report whether requested to do so or not.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See, also, Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testified. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly subpoenaed. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

COMMENT

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but, rather, depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership. See *New York State Club Assn. Inc. v. New York City*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

Although section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion, or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion, or national origin in its membership or other policies, or for the judge regularly to use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of section 2A.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under section 2C or under Canon 2 and section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events, within 1 year after the judge first learns of the practices), the judge is required to resign immediately from the organization.

A person who is not a judge on the date this Code becomes effective and who thereafter becomes a candidate for judicial office is considered to be on notice of the requirements of this Code upon becoming a candidate for judicial office. Such a person would be required, before becoming a judge, to resign from any organizations that practice invidious discrimination.

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law*. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

1. A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

2. A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

3. A judge shall require* order and decorum in proceedings before the judge.

4. A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of staff, court officials, and others subject to the judge's direction and control.

COMMENT

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

5. A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so.

COMMENT

A judge must refrain from speech, gestures or other conduct that reasonably could be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias or prejudice on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media, and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

6. A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel, or others based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. This section does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status or other similar factors are issues in the proceeding.

7. A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law*. A judge shall not initiate, permit, or consider ex parte communications

or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

a. Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized;

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

b. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

c. A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges.

d. A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

e. A judge may initiate or consider any ex parte communications when authorized by law to do so.

COMMENT

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by section 3B(7), it is the party's lawyer, or, if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to furnish a brief amicus curiae.

Certain ex parte communication is approved by section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that section 3B(7) is not violated through law clerks or other personnel on the judge's staff.

If communications between the trial judge and the appellate court with respect to a proceeding appealed from that trial judge is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

8. A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

COMMENT

In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices and avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants, and their lawyers cooperate with the judge to that end.

NOTE: THE NEBRASKA SUPREME COURT HAS ADOPTED CASE PROCESSING GUIDELINES AND HAS ADOPTED A RULE CONCERNING THE REPORTING OF CASES UNDER SUBMISSION.

9. A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to interfere substantially with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

COMMENT

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Nebraska Rules of Professional Conduct and other law*.

Amended July 13, 2005, effective September 1, 2005.

10. A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

COMMENT

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

11. A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

C. Administrative Responsibilities.

1. A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

2. A judge shall require* staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

3. A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

4. A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

Appointees of a judge include assigned counsel; officials such as referees, commissioners, special masters, receivers, special administrators; and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by section C(4).

D. Disciplinary Responsibilities.

1. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action. A judge having knowledge* that another judge has committed a violation of this Code that raises substantial question as to the other judge's fitness for office shall inform the appropriate authority.

2. A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Nebraska Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Nebraska Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority*.

Amended July 13, 2005, effective September 1, 2005.

3. Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged.

4. Members of the Nebraska Judicial Ethics Committee are excepted from section 3(D)(1) concerning information obtained from judges seeking an advisory opinion.

COMMENT

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

E. Disqualification.

1. A judge shall not participate in any proceeding in which the judge's impartiality reasonably might be questioned, including but not limited to instances where:

COMMENT

Under this rule, a judge is disqualified whenever the judge's impartiality reasonably might be questioned, regardless whether any of the specific rules in section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

a. The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding.

b. The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it.

COMMENT

A lawyer in a government agency ordinarily does not have an association with other lawyers employed by that agency within the meaning of section 3E(1)(b). A judge formerly employed by a government agency, however, should not participate in any proceeding if the judge's impartiality reasonably might be questioned because of such association.

c. The judge knows* that the judge, individually or as a fiduciary, or the judge's spouse, parent, or child, wherever residing, or any other member of the judge's family residing in the judge's household* has an economic interest* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis* interest that could be affected substantially by the proceeding.

d. The judge or the judge's spouse, or a person within the fourth degree of relationship* to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be affected substantially by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

e. Any other instance where law* requires disqualification.

COMMENT

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality reasonably might be questioned" under section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "affected substantially by the outcome of the proceeding" under section 3E(1)(d)(iii) may require the judge's disqualification.

2. A judge shall keep informed about the judge's personal and fiduciary* economic interests,* and should make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

3. A judge shall disclose on the record information that the judge believes the parties or their lawyers reasonably might consider relevant to the question of the judge's disqualification, even if the judge believes there is no real basis for disqualification.

F. Remittal of Disqualification.

A judge disqualified by the terms of section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the

judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement must be in writing and filed in the court file of the proceeding.

COMMENT

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek, or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge should have all parties and their lawyers sign the remittal agreement.

CANON 4

A JUDGE SHALL SO CONDUCT ALL
EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE
THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extrajudicial Activities in General.

A judge shall conduct all of the judge's extrajudicial activities so that they do not:

1. Cast reasonable doubt on the judge's capacity to act impartially as a judge;
2. Demean the judicial office; or
3. Interfere with the proper performance of judicial duties.

COMMENT

Complete separation of a judge from extrajudicial activities is neither possible nor wise. Judges should not become isolated from their community.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. See section 2C and accompanying comments.

B. Avocational Activities.

A judge may speak, write, lecture, teach, and participate in other extrajudicial activities concerning the law,* the legal system, the administration of justice, and nonlegal subjects, subject to the requirements of this Code.

COMMENT

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary, and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic, or charitable activities. This phrase is included to remind judges that the use of permissive language in various sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic, or Charitable Activities.

1. A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,* the legal system, or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

COMMENT

See section 2B regarding the obligation to avoid improper influence.

2. A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,* the legal system or the administration of justice. A judge may, however, represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

COMMENT

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice as authorized by section 4C(3). The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system, or the administration of justice and with educational, religious, charitable, fraternal, or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under section 4C(2), but service on a public law school or any private educational institution would generally be permitted under section 4C(3).

3. A judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law,* the legal system, or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

COMMENT

This section does not allow judges to be members of or to hold office in political organizations. See Terminology, "political organization." Canon 5 governs judges' political activities.

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system, or the administration of justice; see section 4C(2).

See comments to section 4B regarding use of the phrase "subject to the requirements of this Code." As an example of the meaning of the phrase, a judge permitted by section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to section 4C. For example, a judge is prohibited by section 4G from serving as a legal advisor to a civic or charitable organization.

a. A judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

COMMENT

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example,

in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

b. A judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds, but shall not participate personally in the solicitation of funds or other fundraising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,* the legal system, or the administration of justice;

(iii) shall not participate personally in membership solicitation if the solicitation reasonably might be perceived as coercive or, except as permitted in section 4C(3)(b)(i), if the membership solicitation is essentially a fundraising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fundraising or membership solicitation.

COMMENT

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, charitable, fraternal, or civic organization as long as the solicitation reasonably cannot be perceived as coercive and is not essentially a fundraising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) A judge may solicit, for funds or memberships, other judges over whom the judge does not exercise supervisory or appellate authority; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fundraising or membership solicitation does not violate section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fundraising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

D. Financial Activities.

1. A judge shall not engage in financial and business dealings that

(a) reasonably may be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

COMMENT

The time for compliance provision in this Code (application section C) postpones the time for compliance with certain provisions of this section in some cases.

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See section 2B; see, also, section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges of the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see comments to section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See comments for section 4B regarding use of the phrase "subject to the requirements of this Code."

2. A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,* including real estate, and engage in other remunerative activity.

COMMENT

This section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

3. A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family, or

(b) a business entity primarily engaged in investments of the financial resources of the judge or members of the judge's family.

COMMENT

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely held family business might otherwise be permitted by section 4D(3), a judge may be prohibited from participation by other provisions of this Code, when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely held family business if the judge's participation would involve misuse of the prestige of judicial office.

4. A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall dispose of investments and other financial interests that might require frequent disqualification.

5. A judge shall not accept, and shall urge members of the judge's family residing in the judge's household* not to accept, a gift, bequest, favor, or loan from anyone except for:

COMMENT

Contributions to a judge's retention campaign, if permitted, are governed by Canon 5, not by section 4D(5).

Because a gift, bequest, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

a. A gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,* the legal system, or the administration of justice;

COMMENT

Acceptance of an invitation to a law-related function is governed by section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See sections 4A(1) and 2B.

b. A gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit reasonably could not be perceived as intended to influence the judge in the performance of judicial duties;

c. Ordinary social hospitality;

d. A gift from a relative or friend, for a special occasion such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

COMMENT

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, section 4D(e).

e. A gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 3E;

f. A loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

g. A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

h. Any other gift, bequest, favor, or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if the value of the gift, bequest, or favor exceeds \$100.00, or if the value of the loan exceeds \$1,000.00, the judge reports it in the same manner as the judge reports compensation as required in section 4J. All loans that create actual conflicts of interest shall be reported in the same manner as compensation under section 4J.

COMMENT

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge. It also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

E. Fiduciary Activities.

1. A judge shall not serve as personal representative, conservator, trustee, guardian, attorney in fact, or other fiduciary,* except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

2. A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

3. The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

COMMENT

The time for compliance provision of this Code (application section C) postpones the time for compliance with certain provisions of this section in some cases.

The restrictions imposed by this canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of section 4D(4).

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

COMMENT

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

G. Practice of Law. A judge shall not practice law. A judge who acts pro se is not considered to be practicing law.

COMMENT

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearance before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See section 2(B).

H. REIMBURSEMENT OR WAIVER OF CHARGES FOR TRAVEL-RELATED EXPENSES OF THE JUDGE OR THE JUDGE'S SPOUSE OR GUEST.

1. Unless otherwise prohibited by law,* a judge may accept reimbursement of, or a waiver of, charges from sources other than the judge's employing entity for necessary travel, food, and lodging expenses associated with the judge's participation in extrajudicial activities permitted by this Code, but only if such acceptance does not cast reasonable doubt on the judge's ability to act with independence, integrity, or impartiality.

2. Expense reimbursement and waiver of charges shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

COMMENT

[1] Judges are encouraged to participate in educational programs in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Attendance at educational activities where the expenses are paid for by persons or entities other than the judge, however, must be evaluated by the judge to determine whether attendance is consistent with the requirements of this Code.

[2] A judge's decision whether to accept the gift of expenses or a waiver of fees in attending an educational activity should be based on an assessment of all of the circumstances, and the judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment. The judge should, for example, consider whether the sponsor or the funding source of the educational activity is currently appearing or likely to appear before the judge in a matter, thus possibly requiring disqualification of the judge. See section 3E.

[3] A judge also should not attend educational activities sponsored by organizations with which the judge may not properly be associated, such as organizations that practice invidious discrimination; to do so would violate section 2A if the judge's attendance might be perceived as manifesting approval of the organization's policies.

[4] The factors that a judge should consider when deciding whether to attend a particular educational activity on an expenses-paid basis include:

- [a] whether the sponsor is an accredited educational institution or bar association rather than a for-profit entity or trade association;
- [b] whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;
- [c] whether the content is unrelated to the subject matter of litigation before the judge or is related to matters that are, or are likely to come, before the judge;
- [d] whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;
- [e] whether information concerning the activity and its funding sources are available upon inquiry;
- [f][1] whether the sponsor or the source of funding are generally associated with particular parties or interests likely to appear in the judge's court;
[2] whether contributors to seminar funding control the curriculum, faculty, or invitation list.
- [g] whether differing viewpoints are presented; and
- [h] the number of participants, whether a broad range of judicial and nonjudicial participants are invited, and whether the program is designed specifically for judges.

In addition, the judge should determine whether attendance may create a conflict of interest, may result in disqualification or recusal in matters coming before the judge, may give rise to a judge's independence being questioned, or may interfere with the judge's performance of his or her judicial duties.

[5] In addition to disclosure required by section 4J, a judge must take reasonable steps to ensure that information concerning the judge's participation in educational activities and other events, as well as reasonable information regarding the nature and circumstances of such events, is made available to the public. A judge should therefore promptly and publicly disclose participation in extrajudicial events at which the expenses are paid by persons or entities other than the judge.

I. COMPENSATION FOR EXTRAJUDICIAL ACTIVITIES.

1. A judge may accept compensation for extrajudicial activities permitted by this Code, unless such acceptance casts reasonable doubt on the judge's capacity to act with independence, integrity, or impartiality.

2. Compensation shall not exceed a reasonable amount, nor shall it exceed what a person who is not a judge would receive for the same activity.

COMMENT

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not exploit or appear to exploit the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. The source of the payment of any such compensation must not raise any question of undue influence or the judge's ability or willingness to be impartial.

J. REPORTING OF COMPENSATION, REIMBURSEMENT OF EXPENSES, AND WAIVER OF CHARGES.

A judge shall report the date, place, and nature of any activity for which the judge received compensation, reimbursement of expenses, or waiver of charges; the name of the payor or waivor; and the amount of compensation, reimbursement of expenses, or waiver of charges so received. The judge's report shall be made annually, and shall be filed as a public document in the office of the Clerk of the Supreme Court on forms furnished by that court.

COMMENT

By reporting and publicly disclosing their compensation, reimbursement of expenses, or waiver of charges for extrajudicial activities, judges promote transparency and public confidence in the integrity, impartiality, and independence of the judiciary.

K. Disclosure of a judge's income, debts, investments or other assets is required to the extent provided in this canon, in sections 3E and 3F, by the disclosure form provided pursuant to section 4J, or as otherwise required by law.*

COMMENT

Under section 3E, a judge is not permitted to participate in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the terminology section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties. Section 4J requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

Canon 4D(5)(h), 4H, 4I, 4J, and 4K amended September 20, 2006.

CANON 5

A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

A. Standards of Political Conduct in General for All Judges and Candidates.

1. Except as authorized in sections 5B(2) and 5C(1), a judge or a candidate* for retention in or appointment to judicial office shall not:

- a. Act as a leader or hold an office or membership in a political organization*;
- b. Publicly endorse or publicly oppose another candidate for public office;
- c. Make speeches on behalf of a political organization;
- d. Attend political gatherings; or
- e. Solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

COMMENT

A judge or candidate for judicial office retains the right to participate in the political process as a voter. Registering to vote with a party designation does not constitute membership in a political organization.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

Postelection parties held for the purpose of raising political funds are political gatherings for the purposes of section 5A(1)(d).

2. A judge shall resign from judicial office upon becoming a candidate* for a nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law* to do so.

3. A candidate for a judicial office:

a. Shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family* to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

COMMENT

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

b. Shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the sections of this canon;

c. Except to the extent permitted by section 5C(2), shall not authorize or knowingly* permit any other person to do for the candidate what the candidate is prohibited from doing under the sections of this canon;

d. Shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent;

COMMENT

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies, or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of the candidate's personal views. See, also, section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This section applies to any statement to commissions charged with judicial selection. See, also, applicable rules of the Nebraska Rules of Professional Conduct.

Amended July 13, 2005, effective September 1, 2005.

e. May respond to personal attacks or attacks on the candidate's record as long as the response does not violate section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

1. A candidate* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

2. A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

a. Such persons may:

(i) except as prohibited by law, communicate with the appointing authority, including any nominating commission;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for appointment to the office, and from individuals to the extent requested or required by those specified in section 5B(2)(a), and to the extent not prohibited by law;

(iii) provide to those specified in sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to the candidate's qualifications for the office;

b. A nonjudge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law:

(i) retain an office and membership in a political organization,*

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

COMMENT

Section 5B(2) provides a limited exception to the restrictions imposed by sections 5A(1) and 5D. Under section 5B(2), candidates seeking appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under section 5B(2), nonjudge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings, and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See sections 5B(1), 5B(2)(a), 5E, and application.

C. Judges Subject to Retention Election.

1. A judge or a candidate* subject to retention election may, except as prohibited by law,* when the judge's candidacy has drawn active opposition:

a. purchase tickets for and attend political gatherings;

b. contribute to a political organization*;

c. speak to gatherings on his or her own behalf;

d. appear in newspaper, television, and other media advertisements supporting his or her candidacy; and

e. distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

COMMENT

Section 5C(1) permits judges subject to retention election with active opposition to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

2. A judicial candidate for retention election whose candidacy has drawn active opposition shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A judicial candidate for retention election whose candidacy has drawn active opposition may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums, and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign, and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than six months before an election and no later than 30 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

COMMENT

Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under section 3E.

Campaign committees established under section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate postelection fundraising, to the extent possible.

Unless the candidate is required by law to file a list of campaign contributors, the contributors' names should not be revealed to the candidate.

D. Permissible Political Activity for Incumbent Judges.

A judge shall not engage in any political activity except

1. as authorized under any other section of this Code;
2. on behalf of measures to improve the law,* the legal system, or the administration of justice; or
3. as expressly authorized by law.

COMMENT

Neither section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system, and the administration of justice, see comments to section 4B; see, also, section 4C(1) and its comments.

E. Applicability.

Canon 5 generally applies to all incumbent judges and judicial candidates.* A successful candidate, whether or not an incumbent, is subject to judicial discipline for the candidate's campaign conduct. An unsuccessful candidate who is a lawyer is subject to lawyer discipline for the candidate's campaign conduct. A lawyer who is a candidate for judicial office is subject to the Nebraska Rules of Professional Conduct.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

All judges appointed pursuant to Neb. Const. art. V, § 21, acting judges of the Workers' Compensation Court, clerk magistrates, child support referees, and referees in civil and disciplinary cases shall comply with this Code except as provided below. In addition, candidates for appointment to judicial office shall comply with sections 5A, 5B, and 5C.

A. Part-Time Judges.*

1. Is not required to comply with sections 4C(2), 4D(3), 4D(4), 4E, 4F, 4G, 4J, or 4K; and,
2. Shall not practice law in the court on which the part-time judge serves or in any court subject to the appellate jurisdiction of the court on which the part-time judge serves, or act as a lawyer in a proceeding in which the part-time judge has served or in any related proceedings.
3. Part-time child support referees shall not practice law in the court upon which they serve, but may practice law in any other court in matters not related to any proceedings in which they have served as child support referees.
4. Referees, appointed pursuant to Neb. Rev. Stat. § 25-1129 et seq. or for disciplinary proceedings, while acting as such, are not required to comply with sections 4C(2), 4D(3), 4D(4), 4E, 4F, 4G, 4J, or 4K. Persons who have served as such a referee shall not act as lawyers in any proceeding in which they have served as referees or in any related proceedings.

B. Retired Judges.

1. A retired judge who does not file with the Nebraska Supreme Court a statement of consent to be recalled for temporary judicial service or who is ineligible for judicial service need not comply with this Code, except as specifically provided.

A retired judge who consents to be recalled for temporary judicial service shall comply with this Code. However, such judge is not required to comply with sections 4C(2), 4E, 4F, 4H, 4J, or 4K. A retired judge who is subject to recall shall not practice law and shall refrain from accepting assignment in any case in which the retired judge's financial or business dealings, investments, or other extrajudicial activities might be directly or indirectly affected.

2. A retired judge shall not act as a lawyer in any proceeding in which the retired judge has served as a judge or in any other proceeding related thereto.
3. A retired judge is a person who has terminated full-time judicial service upon reaching retirement age or has been retired for disability.

C. Time for Compliance.

A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except sections 4D(2), 4D(3), and 4E and shall comply with these sections as soon as reasonably possible and shall do so in any event within the period of 1 year after assuming office.

This section amended June 21, 1995; section A(1), A(4) and B(1) amended September 20, 2006.

APPENDIX A

Judicial Ethics Committee

JUDICIAL ETHICS COMMITTEE

A. The Nebraska Supreme Court shall appoint a Judicial Ethics Committee consisting of seven members. Two members shall be appointed from each of the county and district courts and one from the Court of Appeals. The remaining members shall be judges appointed from any affected courts, but not from the Nebraska Supreme Court. The Supreme Court shall designate one of the members as chair and one member as vice chair who may serve in the event of disqualification or unavailability of the chair. When the committee is first appointed, all members shall commence their service forthwith and serve until December 31, 1992, and thereafter one of such members shall be designated to serve for a term of 1 year expiring December 31, 1993, and in like manner, one for a term of 2 years, one for a term of 3 years, one for a term of 4 years, one for a term of 5 years, one for a term of 6 years, and one for a term of 7 years, and thereafter all regular terms shall be 7 years. No member of the committee shall serve consecutive 7-year terms, but may, however, be reappointed to membership on the committee after a lapse of 1 year.

Section A revised October 1992.

B. The Judicial Ethics Committee so established shall have authority to:

1. By the concurrence of a majority of its members, express its opinion on proper judicial conduct with respect to the provisions of this Code, either on its own initiative, at the request of a judge or candidate for judicial office, at the request of the Director of Nebraska Judicial Branch Education or the Nebraska Judicial Branch Education Advisory Committee, or at the request of a court or the Nebraska Commission on Judicial Qualifications, provided that an opinion may not be issued on a matter that is pending before a court or before the commission except on request of the court or commission;

2. Make recommendations to the Nebraska Supreme Court for amendment of this Code; and

3. Adopt rules relating to the procedures to be used in expressing opinions, including rules to assure a timely response to inquiries.

Section B(1) amended September 20, 2006.

C. A judge or candidate for judicial office as defined in the terminology section of this Code who has requested and relied upon an opinion may offer the opinion in a disciplinary proceeding based on conduct conforming to that opinion.

D. An opinion issued pursuant to this rule shall be filed with the State Court Administrator. Such an opinion is confidential and not public information unless the Nebraska Supreme Court otherwise directs. However, the State Court Administrator shall cause an edited version of each opinion to be prepared, in which the identity and geographic location of the person who has requested the opinion, the specific court involved, and the identity of other individuals, organizations, or groups mentioned in the opinion are not disclosed. Opinions so edited shall be published periodically in the manner the Supreme Court deems proper.

APPENDIX B

Case Progression Standards

CASE PROGRESSION STANDARDS

Trial or hearing on the merits of a case should be within the following time limits from date of filing:

DISTRICT COURT

Appeals	3 months
Criminal Cases	6 months
Domestic Relations Cases	9 months
Civil Cases--Nonjury	1 year
Civil Cases--Jury	18 months

COUNTY COURT

Misdemeanor and Traffic Offenses--Nonjury	60 days
Misdemeanor and Traffic Offenses--Jury	6 months
Civil Cases	6 months
Preliminary Hearings	As soon as possible but no more than 30 days

Final disposition of probate cases should be within 1 year from filing except when a federal estate tax return is required, and, in that event, 18 months.

A longer interval may be approved where deemed necessary because of extraordinary eventualities, such as exceptionally complicated discovery, stabilization of injury in personal injury cases, or settlement of financial affairs in complex cases.

JUVENILE COURT

(1) Notwithstanding any federal or state law providing for a longer period, the juvenile shall not be held in detention for more than 48 hours without a probable cause hearing being conducted by the appropriate judicial authority.

(2) Adjudication hearings in dependent/neglect cases under Neb. Rev. Stat. § 43-247(3)(a) should be held within 90 days of filing of the petition, except in cases with exceptional complications, in which cases adjudication should be held in 180 days. Adjudication hearings in law violation cases should be held within 180 days of filing of the petition.

(3) A disposition hearing should be held within 60 days from the date of the adjudication hearing, unless good cause is shown.

(4) Review hearings for children in out-of-home placements should be held, on the record, every 6 months.

Amended October 29, 1997.

CASE PROGRESSION REPORTS - MATTERS UNDER ADVISEMENT

On the last day of the month, each judge shall file a report form with the State Court Administrator which sets forth:

1. Whether any matter has been under advisement for more than 90 days.
2. If so, the title and number of the case, the nature of the matter for decision, the date it was taken under advisement, and the reason it has not been decided.

A matter is taken under advisement on the date all evidence has been received, or if there is no evidence, the date the legal issue has been heard by the judge. Time for filing briefs is not considered.

Report of Cases Under Advisement

TO: Nebraska Supreme Court
Administrative Office of Courts/Probation

FROM: _____

☐ County Judge

☐ Juvenile Judge

MONTH
ENDING: _____

_____ I have no matters which have been under advisement for more than 90 days.

_____ I have _____ matter(s) which has/have been under advisement for more than 90 days (do not include cases in which a presentence investigation has been requested but has not been received by the court; do not include cases in which a bench warrant has been issued). Provide case description below. (To report more than one case, attach additional form(s).)

Case Title: _____

Case Number: _____

Location of Hearing: _____

Date Taken Under Advisement: _____

Describe the nature of the matter for decision and the reason it has not been decided:

(Use the reverse side of this form or an additional page if needed.)

Dated this _____ day of _____, _____. _____
Signature

**Please submit reports no later than the 5th of each month to:
Administrative Office of Courts/Probation, P.O. Box 98910, Lincoln, NE 68509-8910**

Report of Cases Under Advisement

TO: Nebraska Supreme Court
Administrative Office of Courts/Probation

FROM: _____

District Judge

MONTH

ENDING: _____

_____ I have no matters which have been under advisement for more than 90 days.

_____ I have _____ matter(s) which has/have been under advisement for more than 90 days (do not include cases in which a presentence investigation has been requested but has not been received by the court; do not include cases in which a bench warrant has been issued). Provide case description below. (To report more than one case, attach additional form.)

_____ I have _____ appeal(s) from the county court under advisement (do not include appeals in which the transcript and/or bill of exceptions have not been filed). Provide case description below. (To report more than one case, attach additional form(s).)

Case Title: _____

Case Number: _____

Location of Hearing: _____

Date Taken Under Advisement: _____, or

Date Appeal Filed: _____

Describe the nature of the matter for decision and the reason it has not been decided:

(Use the reverse side of this form or an additional page if needed.)

Dated this _____ day of _____, _____. _____

Signature

**Please submit reports no later than the 5th of each month to:
Administrative Office of Courts/Probation, P.O. Box 98910, Lincoln, NE 68509-8910**

Report of Cases Under Advisement

TO: Nebraska Supreme Court
Administrative Office of Courts/Probation

FROM: _____
Workers' Compensation Judge

MONTH _____
ENDING: _____

_____ I have no matters which have been under advisement for more than 90 days.

_____ I have _____ matter(s) which has/have been under advisement for more than 90 days.
Provide case description below. (To report more than one case, attach additional form.)

Case Title: _____

Case Number: _____

Location of Hearing: _____

Date Taken Under Advisement: _____,

Describe the nature of the matter for decision and the reason it has not been decided:

(Use the reverse side of this form or an additional page if needed.)

Dated this _____ day of _____, _____. _____
Signature

**Please submit reports no later than the 5th of each month to:
Administrative Office of Courts/Probation, P.O. Box 98910, Lincoln, NE 68509-8910**

APPENDIX C

Judicial Financial Interest Statement

JUDICIAL FINANCIAL INTEREST STATEMENT

GENERAL INFORMATION

The Code of Judicial Conduct as adopted by the Nebraska Supreme Court provides in part that:

A judge shall regularly file reports of compensation received for any extrajudicial activity for which the judge received compensation. A judge shall also regularly file reports of personal holdings and of gifts, bequests, favors, and loans received of such a nature that the judge's impartiality might reasonably be challenged.

All Nebraska judges are required to file this statement in the office of the Clerk of the Supreme Court at the address on the front of this form. The report must be filed no later than May 1 of each year. Except as otherwise provided by the rules of the Supreme Court or this form, all questions regarding filing shall be governed by the canons of the Nebraska Code of Judicial Conduct as adopted by the Supreme Court.

This statement must include all financial interests held at any time during the calendar year, and may not be limited to interests held at the end of the year.

DEFINITIONS

COMPENSATION

Any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense then constituting income under the Internal Revenue Code. The income must, however, be for services and does not include income, interest, or dividends received by reason of investment. Expense reimbursement exceeding actual cost is compensation.

GIFT

A payment, subscription, advance, forbearance, rendering or deposit of money, services, or anything of value, unless consideration of equal or greater value is given therefor. Gift shall not include a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the judge's immediate family or a relative or close personal friend whose appearance or interest in a case would in any event require disqualification.

MEMBER OF THE JUDGE'S FAMILY RESIDING IN THE JUDGE'S HOUSEHOLD

Any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

JUDICIAL FINANCIAL INTEREST STATEMENT

The Nebraska Supreme Court requires that this form be completed and
filed by all Nebraska judges no later than May 1 of each year.

<p><i>Complete and return to:</i></p> <p>Clerk of the Supreme Court 2413 State Capitol Building Lincoln, NE 68509</p>	<p><i>This section for Supreme Court use:</i></p> <p>Date Received: _____</p> <p>Filing Recorded: _____</p> <p>Microfilmed: _____</p>
---	---

Date Received: _____
Filing Recorded: _____
Microfilmed: _____

I am a judge serving the: <input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court <input type="checkbox"/> Juvenile Court			
OR I am a <input type="checkbox"/> Clerk Magistrate <input type="checkbox"/> Court of Appeals <input type="checkbox"/> County Court <input type="checkbox"/> Workers' Comp. Ct.			

Judicial District (if applicable): _____

Last Name		First Name		M.I.
Address				
City		State	Zip Code	Telephone Number

Date	Place	Nature of Activity	Payor	Amount of Compensation

JUDICIAL FINANCIAL INTEREST STATEMENT

ITEM 3 - Real Property of the Filer in Nebraska:

List all the real property in your name or in which you have a direct ownership interest. Real estate valued at less than \$1,000 and your personal residence need not be reported. The description used must be sufficient to identify the location of the property. You do not need to use the legal description, although that may be used.

Location of Property	Nature of Property (i.e., agricultural, commercial, residential-rental)

ITEM 4 - Sources of Bequests, Gifts, or Favors of a Value Greater Than \$100 Received and the Circumstances of Each Gift Except Gifts from Relatives:

Name of Donor	Address of Donor	Occupation or Nature of Business of Donor

Circumstances of each bequest, gift, or favor or the occasion for which the gift or favor was given:

JUDICIAL FINANCIAL INTEREST STATEMENT

ITEM 5 - Other Financial Interests and Property Held During the Period of the Statement:

You need report only items which have a fair market value of \$1,000 or more.

- A. List the names and addresses of the institutions in which you had checking and savings accounts and certificates of deposit.

Financial Institution	Address

- B. List the name of the issuers of all stocks, bonds, and government securities that you own.

- C. Describe other property owned or held for the production of income not otherwise disclosed in this statement. Include leaseholds and other interests in real estate, promissory notes and other obligations owned to you, beneficial interests in trusts and estates, cash value life insurance, IRAs, deferred income and retirement plans. Do not include household goods, personal automobiles, and other intangible personal property unless such property was held primarily for sale or exchange.

JUDICIAL FINANCIAL INTEREST STATEMENT

ITEM 6

A. Creditors to Whom \$1,000 or Greater Was Owed or Guaranteed by You or a Member of Your Family Residing in Your Household:

Accounts payable, debts arising out of retail installment transactions or from loans made by financial institutions in the ordinary course of business. Loans from a relative and land contracts that have been recorded with the county clerk or register of deeds need not be reported.

Name	Address

B. Creditors Whose Loans of Any Amount Create Actual Conflicts of Interest.

Describe the circumstances of each such loan and its amount.

Name and Address	Circumstances and Amount

ITEM 7 - County or Other Nonstate Funding Sources Providing Education, Travel, or Other Benefits to You or on Your Behalf:

Name of Funding Source	Type or Purpose of Funding

ITEM 8 - Signature of Judge and Date

Date _____ Name _____

Please attach a sheet of paper if you need more space for any item.

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Nebraska Judicial Qualifications Commission

The following information is provided for your benefit in connection with the operation of the Judicial Qualifications Commission. This information does not comprise all of the laws with regard to the Nebraska Judicial Qualifications Commission and is intended simply to give you some general information. Should you have more specific questions with regard to the Judicial Qualifications Commission, you should contact: Commission Secretary, P.O. Box 98910, Lincoln, NE 68509; phone (402) 471-3730.

Article V, Section 28, of the Nebraska Constitution provides for the creation of a Commission on Judicial Qualifications.

Chairperson: Chief Justice Michael G. Heavican, Nebraska Supreme Court

Article V, Section 30, of the Nebraska Constitution and Nebraska Revised Statute Section 24-722 (Reissue 1989) specifically set out the grounds for which a judge may be reprimanded, disciplined, censured, suspended without pay for a definite period of time not to exceed six months, or removed from office. The grounds are the following: (1) willful misconduct in office, (2) willful disregard of or failure to perform his or her duties, (3) habitual intemperance, (4) conviction of a crime involving moral turpitude, (5) disbarment as a member of the legal profession licensed to practice law in the State of Nebraska, or (6) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The Commission is not authorized to review decisions made by a judge or to grant any form of relief arising out of a lawsuit except to the extent that the actions of the judge in the case constitutes a violation of one of the grounds set out above.

Upon receiving the complaint, the Commission is authorized to make such investigation as it deems appropriate under the circumstances and upon a finding of probable cause, may reprimand the judge or may order a formal hearing to be held before it concerning the reprimand, discipline, censure, suspension, removal, or retirement of such judge. After a formal hearing, the Commission must find that the charges are established by clear and convincing evidence. If it finds that such charges are established by clear and convincing evidence, it then recommends to the Supreme Court what action should be taken. The Supreme Court then reviews the record and makes such determination as it finds just and proper.

All papers filed with and proceedings before the Commission, prior to any formal open hearing, are confidential and all testimony given before the Commission is deemed a privileged communication.

NO PARTICULAR FORM NEED BE USED WHEN FILING A COMPLAINT. THE ATTACHED FORM IS PROVIDED FOR YOUR CONVENIENCE. YOU NEED NOT FILL IT OUT IF YOU DESIRE NOT TO AND MAY MAKE COMPLAINT BY SIMPLY SENDING A HANDWRITTEN LETTER TO THE COMMISSION OR ANY MEMBER THEREOF.

NEBRASKA COMMISSION ON JUDICIAL QUALIFICATIONS

Complaint or Request Form

CONFIDENTIAL

TO: Commission on Judicial Qualifications

FROM: _____

DATE: _____

Please consider this form to be: (select one)

_____ A complaint against a judge of the State of Nebraska regarding his or her acts, activities, or qualifications.

_____ A request that the Commission consider the qualifications of a judge of the State of Nebraska.

1. Name of the Judge: _____

2. Name of Court: _____

3. City: _____

4. Date of incident: _____

5. Time of incident: _____

(If not a specific incident, dates and times of the activity that cause the complaint or request.)

6. Location of incident: _____

7. The information you provide in this statement should be based on facts and not on personal conjecture.

This complaint or request is being filed against Judge _____ because:

(Attach additional pages if necessary.)

8. Please list all known witnesses' names, addresses, and phone numbers:

(Attach additional pages if necessary.)

Dated this _____ day of _____, _____.

Signature

Type or Print Full Name

Street Address

City, State, Zip

Office Phone: _____ Home: _____

ANY OTHER PERSON DESIRING TO SIGN THIS COMPLAINT OR REQUEST SHOULD ATTACH A SIGNATURE BLOCK SIMILAR TO THE ABOVE FORMAT.

Please mail in an envelope marked CONFIDENTIAL to:

Commission on Judicial Qualifications
ATTN: Secretary
Nebraska Supreme Court
P.O. Box 98910
Lincoln, NE 68509

The Commission on Judicial Qualifications shall follow the provisions of Nebraska Revised Statutes, Sections 24-715 through 24-728, in the disposition of this complaint or request.