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IN THE MATTER OF THE OKLAHOMA BAR ASSOCIATION

TO AMEND THE OKLAHOMA RULES OF PROFESSIONAL CONDUCT

78 Okla. Bar J. 1063 (Apr. 17, 2007)

ORDER

¶1 Upon application by the Oklahoma Bar Association, the Court approves the amendments to the Oklahoma Rules of Professional Conduct as set forth in Exhibit A filed herewith this Order.

¶2 ...

¶3 This order and the amended rules shall be released for official publication and shall be available online from the Oklahoma Bar Association’s website, www.okbar.org.

¶4 The current rules shall remain in effect until January 1, 2008. The amendments to the Oklahoma Rules of Professional Conduct ... shall be effective January 1, 2008.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE on this 9th day of April, 2007.

EDITEOR’S NOTE: The Oklahoma Rules of Professional Conduct (OkRPC) effective January 1, 2008 are almost identical to the ABA Model Rules of Professional Responsibility (MRPC) in the 2003 version. However, the OkRPC do have a few differences in comparison to the MRPC 2003. Moreover, the ABA amended the MRPC Rule 1.10 in February 2009, thereby creating additional differences between the OkRPC and the present version of the MRPC.

To visually show these differences,

• the MPRC only language will be set forth in italic font so that when you read italics you know that the language you are reading is found only in the MRPC;

• the Oklahoma only language will be set forth in bold font so that when you read bold print you know that the language you are reading is found only in the OkRPC.

• when the OkRPC and the MRPC share the same language, the identical words are set forth in regular font, just as you are reading now. As you will soon visually see, the vast majority of the OkRPC and the MRPC are identical and, thus, are presented in regular font, just as you are reading now.

Please be aware that the above rules about the use of italics, bold, and regular font does not apply to headers. The headers are identical between the OkRPC and the MRPC even though in this supplement these are set forth in bold. Bold print is used for the headers for ease of the reader to distinguish where a new rule begins, or the comments begin, or where a new main point within the comments begins.
Oklahoma Rules of Professional Conduct

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 dealing 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 2.4. 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 or 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 regulations 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 give rise to a cause of action nor should it create presumption that a legal duty has been breached. 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. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty. Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under the Rules has limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges. The lawyer's exercise of discretion not to disclose information under Rule 1.6 should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.
[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] Under the heading Oklahoma Modifications, changes from the ABA Model Rules of Professional Conduct and the related Comments are noted.

**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 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 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 video recording 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(c), 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.

[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.

CLIENT-LAWYER RELATIONSHIP
RULE 1.1 COMPETENCE

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

Comment
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(c).

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 (c) and (d), 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) The substance of (b) is in modified Comment [5].

(b) 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.

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

(d) 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. A lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. 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.

Independence From Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client, including representation by appointment, does not constitute approval or endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[6] 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.

[7] 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.


Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) 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.

[10] 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.

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

[12] Paragraph (d) 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 (d) does not preclude
undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) 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.

[13] 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 workload 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 representation the lawyer has agreed to provide 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 COMMUNICATION
(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 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 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 and the agreement is confirmed in writing; and
(3) the total fee is reasonable.

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 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 and the agreement must be confirmed in writing. Contingent fee agreements must be in writing and 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 representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing:

(i) a crime; or

(ii) a fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client
has used or is using the lawyer’s services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services, provided that the lawyer has first made reasonable efforts to contact the client so that the client can rectify such criminal or fraudulent act, but the lawyer has been unable to do so, or the lawyer has contacted the client and called upon the client to rectify such criminal or fraudulent act and the client has refused or has been unable to do so;

(4) to secure legal advice about the lawyer’s compliance with these Rules;

(5) 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

(6) as permitted or required to comply with these Rules, other law or a court order.

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 to not 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 maze of law 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.

[4A] The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Authorized Disclosure

[5] Except to the extent that the client’s instructions or special circumstances limit the 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. Paragraph (b)(1) 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. Thus, 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 disease or debilitating disease and the lawyer’s disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing any crime, or a fraud as defined in Rule 1.0(d) that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client’s misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer’s obligation or
right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client’s crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[8A] Before using or disclosing confidential information under paragraph (b)(3), the lawyer should, if practicable, inform the client of the lawyer’s ability to use or disclose information as provided in this Rule and the consequences thereof. The exercise of the lawyer’s discretion should be guided by the potential for rectification of the consequences of the client’s criminal or fraudulent conduct, and not considerations relating to the lawyer’s personal interests or professional reputation.

[9] 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)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[10] 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)(5) 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.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) 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.

[12] 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)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

[13] 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 non-frivolous 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)(6) permits the lawyer to comply with the court's order.

[14] 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.

[15] 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)(6). 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 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(d), 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).

Acting Competently to Preserve Confidentiality

[16] 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.

[17] 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 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

[18] 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, or are involved in a sexual relationship as defined by [12] of the Comment to this Rule, there may be a significant risk that client confidences will be revealed and that the lawyer's family will interfere with both loyalty and independent
professional judgment. There are other relationships that may similarly interfere with the loyalty or independent professional judgment of the lawyer. 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). Sexual relations with a client presents a significant risk of violating Rule 1.7(a)(2) and one or more other Rules of Professional Conduct. See OBA Legal Ethics Op. No. 311 (1998) and ORPC Rules 1.1, 1.8(j), 1.7, 2.1, and 8.4. A lawyer should strictly scrutinize whether sexual relations with a client may result in harm to the client or impair the representation. The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence.

Sexual relations with a client is likely to present a substantial risk of a conflict of interest. Sexual relations may: (1) unfairly exploit the lawyer’s fiduciary role; (2) interfere with the lawyer’s independent professional judgment; and (3) impair the lawyer’s ability to represent the client competently. Client confidences may lose the protection of the attorney/client evidentiary privilege because the privilege extends only to communications made in the context of the client/lawyer relationship. If the client and the lawyer were engaged in a consensual sexual relationship before the client/lawyer relationship commenced, then the lawyer may ordinarily undertake a representation provided it does not otherwise present an impermissible conflict under this Rule.

“Sexual relations” includes, but is not necessarily limited to, sexual intercourse or any touching of the sexual or other intimate parts of a client or causing such client to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party or to humiliate, harass, degrade, or exploit. “Sexual relationship” means an established course of sexual relations.

**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 client’s consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, 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 co-defendant. On the other hand, common representation of persons having similar interests in 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 of 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(c).

[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 to the client 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, for the lawyer or a person related to the lawyer. Nor shall the lawyer 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.

(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
(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; 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 or contract 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: (1) a consensual sexual relationship existed between them when the client-lawyer relationship commenced and (2) the relationship does not result in a violation of Rule 1.7(a)(2).

(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(d), 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. 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.

Oklahoma Modification

The black letter text of Rule 1.8(a) made explicit that the client be given written notice on all relevant aspects of the transaction. Subsection (c) struck the ABA language that expanded the definition of “related persons”. Contrary to the ABA rule, subsection (h) flatly prohibits agreements that prospectively limit a lawyer’s liability for malpractice.

RULE 1.9 CONFLICT OF INTEREST:
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 been generally known; or

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

[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

(1) the prohibition is based upon personal interest of the prohibited lawyer and does not represent a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm;

(2) the prohibition is based upon Rule 1.9(a) or (b), and

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

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed, a statement of the firm’s and of the screened lawyer’s compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, as reasonable intervals upon the former client’s written request and upon termination of the screening procedures.” [Editor’s note. The ABA amendments to Rule 1.10 from February 2009 will assuredly give rise to changes in the Comments as compared to the 2003 Comments. This Supplement does not reflect changes in comments because those were not available to the editor at the time of the compilation of this supplement.]

(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 in writing 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.

(e) 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.

Comment
Definition of "Firm"
[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a 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. 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 associated with the individually disqualified 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 the governmental authority and which, at the time this Rule 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 has 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 [9].

[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, arbitrator, or law clerk to such a person, or as a 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 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 or arbitrator.

(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 2.4.

[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 interests of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interests 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.
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 the 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.

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. Ordinarily, 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 advise that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization. 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.

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

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) - (6). 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, Rules 1.6(b)(2) and 1.6(b)(3) may permit the lawyer to disclose confidential information. In such circumstances 1.2 (d) may also be applicable, in which event, withdrawal from the representation under 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 purpose 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 the 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 office 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 five or six years of age, and certainly those of ten or twelve, 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 to 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(d).

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 decision making 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 decision making 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 disability 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, or elsewhere with the written consent of the client or third person. 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 five 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 connection with a representation, a lawyer possesses funds or other property in which both the lawyer and another person claim interests, the funds or other property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved, and the undisputed portion of the funds shall be promptly distributed.

(e) When in the course of a 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.
(f) Where funds or other items of property entrusted to a lawyer have been impressed with a specific purpose as to their use, they shall retain that specific character unless otherwise authorized by a client or third person or prohibited by law. Where funds are impressed with a specific purpose, a lawyer may not subject them to a counterclaim, set off for fees, or subject them to a lien.

(g) Effective January 1, 2009, all members of the Bar who are required under the Oklahoma Rules of Professional Conduct, to maintain a trust account for the deposit of clients’ funds entrusted to said lawyer, shall do so and furnish information regarding said account(s) as hereinafter provided. Each member of the Bar shall provide the Oklahoma Bar Association with the name of the bank or banks in which the lawyer carries any trust account, the name under which the account is carried and the account number. The lawyer or law firm shall provide such information within thirty (30) days from the date that said account is opened, closed, changed, or modified. The Oklahoma Bar Association will provide online access and/or paper forms for members to comply with these reporting requirements. Provision will be made for a response by lawyers who do not maintain a trust account and the reason for not maintaining said account. Information received by the Association as a result of this inquiry shall remain confidential except as provided by the Rules Governing Disciplinary Proceedings. Failure of any lawyer to respond giving the information requested by the Oklahoma Bar Association will be grounds for appropriate discipline.

(h) A lawyer or law firm that holds funds of clients or third parties in connection with a representation shall create and maintain an interest-bearing demand trust account and shall deposit therein all such funds to the extent permitted by applicable banking laws, that are nominal in amount or to be held for a short period of time in compliance with the following provisions:

(1) the account may be established with any bank or savings and loan association authorized by federal or state law to do business in Oklahoma and insured by the Federal Deposit Insurance Corporation;

(2) the rate of interest payable on the account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minimums, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately (except as accounts generally may be subject to statutory notification requirements), even though interest may be sacrificed thereby;

(3) the depository institution shall be directed:

(i) to remit interest or dividends, as the case may be, on the average monthly balance in the account, at least quarterly, to the Oklahoma Bar Foundation, Inc. ("Foundation"); and

(ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or the law firm
for whom the remittance is sent, the account number, the period of time covered by the statement, the rate of interest applied and the average daily balance of the account;

(4) the lawyer or law firm shall not deposit funds belonging to the lawyer or law firm in the account, except that funds necessary to comply with the depository institution's minimum balance requirements for the maintenance of the account or funds needed to pay applicable fees and service charges may be deposited therein;

(5) in determining whether to use the interest-bearing account herein specified, the lawyer shall consider whether the funds to be invested could be utilized to provide a positive net return to the client, taking into consideration the following factors:

(i) the amount of interest that the funds would earn during the period they are expected to be deposited;

(ii) the cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client's benefit; and

(iii) the capability of financial institutions to calculate and pay interest to individual clients;

(6) in the event that any client asserts a claim against a lawyer based upon such lawyer's determination to place client advances in the account because such balance is nominal in amount or to be held for a short period of time, the Foundation shall, upon written request by such lawyer, review such claim and either:

(i) approve such claim (if such balances are found not to be nominal in amount or short in duration) and remit directly to the claimant any sum of interest remitted to the Foundation on account of such funds; or

(ii) reject such a claim (if such balances are found to be nominal in amount or short in duration) and advise the claimant in writing of the grounds therefor. In the event of any subsequent litigation involving such a claim, the Foundation shall interplead any such sum of interest and shall assume the defense of the action;

(7) The requirements of subparagraph (h) shall not apply if:

(i) it is not feasible for the lawyer or law firm to establish an interest-bearing trust account for reasons beyond the control of the lawyer or law firm, such as the unavailability of a financial institution which offers such an account in the community where the principal office of the lawyer or law firm is situated, or

(ii) those financial institutions which offer such an account in the community where the principal office of the lawyer or law firm is situated impose fees and service charges that routinely exceed the interest generated by the account; and

(8) Information necessary to determine compliance or justifiable reason for noncompliance with the requirements of subparagraph (h) shall be included in the reporting required by subparagraph (g) of this Rule. If it appears that a lawyer or law firm has not complied where it is feasible to do so, the matter may be referred to the office of the General Counsel of the Oklahoma Bar Association for appropriate investigation and proceedings.
(i) When a lawyer receives funds subject to this rule that are not required to be deposited in an interest bearing account payable to the Oklahoma Bar Foundation pursuant to (h), the lawyer may create and maintain either an interest bearing or a noninterest bearing account, provided that any interest earned by the funds belongs to the client, shall be distributed according to the client’s instructions, and shall not be used by the lawyer for any purpose without the client’s express consent.

(j) Beginning January 1, 2008 and in addition to the requirements previously set forth in this Rule, lawyers trust accounts shall be maintained only in financial institutions approved by the Office of the General Counsel. The Office shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions.

(k) A financial institution may be approved as a depository for lawyer trust accounts if it files with the Office of the General Counsel an agreement, a Trust Account Overdraft Reporting Agreement (TAORA) form provided by the Office, to report to the Office in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Office.

(l) The Trust Account Overdraft Reporting Agreement shall provide that all reports made by the financial institution shall be in the following format:

1. In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

2. In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby.

3. Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

(m) Every lawyer practicing or admitted to practice in this jurisdiction shall be deemed to have consented to the reporting and production requirements mandated by this rule.

(n) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

(o) Definitions
“Financial Institution” – includes banks, savings and loan associations, savings banks and any other business or person which accepts for deposit funds held in trust by lawyers.

“Properly payable” – refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

“Notice of dishonor” – refers to the notice, which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument, which the institution dishonors.

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 third parties 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 should be kept in trust 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 a 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.

[4A] With respect to paragraph (f), where the lawyer receives funds or other property for the execution of some purpose specifically pointed out, the lawyer is not, as in the case of a simple trust, a passive depository. The lawyer is required to use the funds or other property to carry out the expressed intentions of the client or other depositor. This commonly involves funds or other property being entrusted to a
lawyer specifically for payment to a third party on behalf of the client or other depositor. Examples include funds entrusted to the lawyer specifically for the payment of client’s taxes, or for the payment of litigation expenses, or to be tendered as an offer of settlement in a pending dispute, or to be tendered as a down payment on a contract to purchase property. If the lawyer is unable to carry out the stated intentions of the client or other depositor, the funds or other property must be returned to the depositor unless otherwise instructed or unless the law provides otherwise. The lawyer is not free to unilaterally change the purpose of the funds or other property which may not be applied for the lawyer's own purposes or for any other purpose.

[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 "client's security fund" 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 expenses 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(c) 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
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 also may withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

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**

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

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in Oklahoma in which the practice has been conducted; and

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms, except that:

   (1) the representation of any client who does not consent as provided in paragraph (c) shall not be transferred;

   (2) matters shall not be transferred to a purchaser unless the seller has reasonable basis to believe that the purchaser has the requisite knowledge and skill to handle such matters, or reasonable assurances are obtained that such purchaser will either acquire such knowledge and skill or associate with another lawyer having such competence;

   (3) matters shall not be transferred to a purchaser who would not be permitted to assume such representation by reason of restrictions contained in Rules 1.7 through 1.10 or other Rules; and

   (4) where matters in litigation are involved, any necessary judicial approvals of the transfer of representation must be obtained.

   (c) The seller or the seller's representative shall give written notice to each client whose representation is proposed to be transferred, stating:

      (1) a sale of the entire practice, or the entire area of practice, is proposed;

      (2) a transfer of the representation of such client to a specified lawyer, lawyers, or law firm is contemplated;

      (3) the client has the right to take possession of the file and retain other counsel;

      (4) the existence and status of any funds or property held for the client, including but not limited to retainers or other prepayments; and
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 the date of the notice.

The signed written consent of each client whose representation is proposed to be transferred to a purchaser must be obtained; provided that the client’s consent to the transfer of the client’s files shall be presumed if the client does not take any action or does not otherwise object within ninety (90) days of the date of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller must disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of the file.

(d) The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.

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. However, under the conditions and requirements set forth in this Rule, a practice or an area of practice may be sold.

Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or area of practice, available for sale to the purchaser. The fact that a number of the seller's clients decide not to be represented by the purchaser but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state. Some states, like Oklahoma, are so large that a move from one locale therein to another may be tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To accommodate lawyers so situated, the rule also permits the sale of the practice when the lawyer leaves the geographical area rather than the jurisdiction.

[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-
counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice
[6] 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
[7] 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 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 ninety (90) days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a Court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[9] 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 Arrangement Between Client and Purchaser
[10] The sale may not be financed by increases in fees charged the clients of the
practice. Existing agreements 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
[11] 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).

[12] 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
[13] This Rule applies to the sale of a law
practice of a deceased, disabled or disappeared
lawyer. Thus, the seller may be represented by
a nonlawyer 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.

[14] 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.

[15] 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 therefrom; 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.

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 narrowly 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, 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 INTERMEDIARY
[Deleted 2008]

RULE 2.3 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 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 which 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 2.4 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
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.

**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 the clients’ cases and the applicable law and determine that they can make good faith arguments in support of their client’s 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**
A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

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 that the lawyer reasonably believes is false.

(4) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.

(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 which 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 (d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2 (d), 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 which 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, ordinarily, a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore known falsehoods.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence that 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. In criminal cases, however, a lawyer may, in some jurisdictions, be denied this authority by constitutional requirements governing the right to counsel. 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 (d). 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. In certain circumstances, after the conclusion of the proceeding, a lawyer still has the discretion to rectify the effects of false evidence or false statements of law and fact. See Rules 1.6 and 4.1.

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 lawyer shall not:
(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

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

(c) communicate with a juror or prospective juror after discharge of the jury if:
   (1) the communication is prohibited by law or court order;
   (2) the juror has made known to the lawyer a desire not to communicate; or
   (3) the communication involves misrepresentation, coercion, duress or harassment; or

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

**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 case 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 a reasonable lawyer would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have an imminent and materially prejudicial effect on the fact-finding process in an adjudicatory proceeding relating to the matter and involving lay fact-finders or the possibility of incarceration.
(b) 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.

(c) 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] Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to litigation in which incarceration may result or lay persons will serve as fact-finders. While this proposition applies in civil cases, it is particularly salient with respect to criminal prosecutions. If there were no such limits, the result would be practical nullification of the protective effect of the constitutionally-grounded presumption of innocence and the exclusionary rules of evidence. At the same time, 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. Such rules may be adopted by a tribunal to be generally applicable, to apply to a specific class of litigation, or to govern a particular case, by way of special order. Rule 3.4(c) governs compliance with all such rules; however, a statement in violation of such a rule or order may constitute a violation of Rule 3.6(a), depending on the circumstances.

[3] 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] Notwithstanding paragraph (a), many statements about a matter made by participating lawyers and their associates are unlikely to materially prejudice the fact-finding process in an adjudicative proceeding. While circumstances can result in an otherwise innocuous statement's having a materially prejudicial effect, accurate, factual statements of the following matters will not ordinarily violate the standard of Rule 3.6(a):

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
(2) the information contained in a public record;
(3) that an investigation of the 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 the public interest; and
(7) in a criminal case, in addition to items (1) through (6):
   (i) the identity and occupation 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.

This list is illustrative, not exhaustive.

[5] There are, on the other hand, certain subjects which are more likely than others to have a materially 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 other 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 an imminent and material 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 the defendant is presumed innocent until and unless proven guilty;

[6] The likelihood of prejudice due to a public statement is different depending on the type of proceeding and the timing of the statement. Statements which may be innocuous when not made in close proximity to an adjudicatory proceeding may be materially prejudicial if made on the eve or in the midst of the proceeding. Criminal jury trials in which laypersons serve as fact-finders and other proceedings that could result in incarceration are most sensitive to extra-judicial speech. Civil trials in which laypersons serve as fact-finder(s) may also be quite sensitive. Non-jury hearing and arbitration proceedings are far less prone to be affected by such speech. The rule places limitations on prejudicial comments only with respect to the most sensitive cases. However, regardless of the likelihood of public dissemination of a statement, regardless of the timing of the statement, regardless of the vulnerability of a proceeding to prejudice as a result of the dissemination of a particular statement, and regardless of whether a lawyer is involved in a proceeding or associated with a lawyer who is involved in it, a lawyer should
aspire to refrain from making statements that pose a substantial likelihood of prejudicing the fairness of a proceeding or unjustifiably casting doubt on the fairness of the proceeding or the legal system in general. A lawyer should be especially mindful of the likelihood of such effects when the lawyer's statement is reasonably likely to be disseminated by means of public communication.

[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 reasonably necessary to mitigate undue prejudice created by the statements made by others.

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 first hand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.
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.

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

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”.

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;

(g) The lawyer upon whom a subpoena is served shall be afforded a reasonable time to file a motion to quash compulsory process of his/her attendance. Whenever a subpoena is issued for a lawyer who then moves to quash it by invoking attorney/client privilege, the prosecutor may not press further in any proceeding for the subpoenaed lawyer's appearance as a witness until an adversary in camera hearing has resulted in a judicial ruling which resolves all the challenges advanced in the lawyer's motion to quash.

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 Standard of Criminal Justice Relating to 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] Paragraphs (e) and (g) are 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. It ensures that a subpoena caused to be issued by a prosecutor to the lawyer requesting evidence about a past or present client of a lawyer will be subject to judicial review upon a timely challenge by the subpoenaed lawyer.

[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, under paragraph (f), a prosecutor has an affirmative duty to make reasonable efforts to prevent law enforcement personnel and others associated with or assisting the prosecution from making extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor.

**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 the 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.

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(d), 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(d) 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 the information, then under paragraph (b) the lawyer is required to do, 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 non-lawyer 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**
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(f).

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.

LAW FIRMS AND ASSOCIATIONS

Rule 5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

(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 such 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 the 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 assure that such assistants receive 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;
   (2A) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;
   (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) [The concept of this subsection of the ABA Model Rule is addressed in the Comment.]

(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.

[1A] Subsection (a) does not prohibit a lawyer from voluntarily sharing court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter. This shall not be deemed a sharing of attorneys fees.

[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; MULTI JURISDICTIONAL 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) Subject to the provisions of 5.5(a), a lawyer admitted in a United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in a jurisdiction where not admitted to practice 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 in connection with the employer’s matters, provided the employer does not render legal services to third persons 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 law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Admission to practice law in Oklahoma is controlled by the Rules Governing Admission to the Practice of Law in the State of Oklahoma (Oklahoma Statutes Title 5, chapter 1, appendix 5 (2005)) and is administered by the Oklahoma Board of Bar Examiners. 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(a) 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 a jurisdiction where not admitted 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 a jurisdiction where not admitted and may therefore be permissible under paragraph (c). Services may be “temporary” even though the lawyer provides services in a jurisdiction where not admitted 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. Paragraph (c) applies to both lawyers admitted in this jurisdiction and lawyers admitted to other jurisdictions. However, since temporary practice involves more than one jurisdiction, paragraph (c) contemplates that any temporary practice must consider the applicable rules or law relating to the unauthorized practice of law of both jurisdictions. See also Rule 8.5.

[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) provides that a lawyer rendering services in a jurisdiction where not admitted and 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 a jurisdiction where not admitted 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 a jurisdiction where not admitted 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 a jurisdiction where not admitted 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. 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. See Rules Governing Admission to the Practice of Law in the State of Oklahoma, Supra.

[16] Paragraph (d)(1) applies to a lawyer who is employed to provide legal services to the employer or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer provided the employer does not render legal service to third persons. This paragraph does not authorize the provision of personal legal services to the employer’s officers, employees, or other third persons. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer provided, the employer does not render legal services to third parties. 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 a jurisdiction where not admitted to practice 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 a jurisdiction where not admitted to practice pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in the jurisdiction where not admitted to practice. 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 a jurisdiction by lawyers who are not admitted to practice in such jurisdiction. 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 non-lawyer.

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 with 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 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 nature and scope of such measures will depend upon the facts and may include, but not be limited to, the following:

(1) Providing written notice of the lawyer's interest in the entity before providing the law-related services, with written acknowledgment of the notice by the person;
(2) Keeping the offices of the lawyer and the law-related business physically separate;
(3) Providing disclaimers in any marketing or advertising; and

[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 non-lawyer 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(b) 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 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). However, even if the Rules' protections do not fully apply to the delivery of law-related services, the lawyer should remember that the rules still apply to the lawyer's activities as a lawyer, most notably when interacting with the law-related business. For example, the lawyer is prohibited from disclosing to the law-related business information relating to the representation of a client without the client's consent, even though the client is also a customer or client of the law-related business (see Rule 1.6), except where otherwise authorized or required by the rules.

PUBLIC SERVICE

RULE 6.1 PRO BONO PUBLIC SERVICE

A lawyer should render public interest legal service.

A lawyer may discharge this responsibility by:

(a) providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations;

(b) serving without compensation in public interest activities that improve the law, the legal system, or the legal profession; or

(c) financial support for organizations that provide legal services to persons of limited means.

Comment

[1] The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This Rule expresses that policy but is not intended to be enforced through disciplinary process.

[2] The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms.
As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

[3] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provisions of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.

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 publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters of 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 affected 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. See also Rule 1.2 (b). 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 affected.

Oklahoma Modification

Oklahoma substituted the word “affected” instead of “benefitted” because of its
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(c). 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.

**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 communication 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.

**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, directly or indirectly, 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) without paying anything solely for the referral, 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 air time, 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 agreements 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. For the purposes of Rule 7.2(b)(4), such reciprocal referral agreements do not constitute a prohibited thing of value. Conflicts of interest created by such agreements 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.

Oklahoma Modification
The Oklahoma version of Rule 7.2(b)(4) adds language to the text and Comment to underscore that reciprocal referral agreements do not constitute a prohibited thing of value. The Oklahoma version retains the preexisting Oklahoma formulation extending the prohibition of Rule 7.2(b) to both direct and indirect things of value.

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 known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(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 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(c)(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 7.3(c) that certain communications be marked “Advertising Material” 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 AND CERTIFICATION
Specialization
(a) A lawyer may, by advertisement or otherwise, communicate the fact that the lawyer does or does not practice in particular fields of law or limits his practice to or concentrates in particular fields of law.

(b) A lawyer shall not state or imply that the lawyer is certified as a specialist in a particular field of law except as follows:

(1) 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;

(2) A lawyer engaged in admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation; and

(3) A lawyer who is certified as a specialist in a particular field of law practice by the Supreme Court of the State of Oklahoma may communicate that fact, but only in accordance with the rules prescribed by that Court; and

(4) A lawyer who is certified as a specialist in a particular field of law practice by the official licensing authority of another state in which the lawyer is licensed may communicate that fact, but only in accordance with all rules and requirements of such state's licensing authority, and provided that the lawyer also communicates that such certification is not recognized by the Supreme Court of the State of Oklahoma.

(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

The heading of this Rule has been modified to reflect the related issues addressed by this Rule.

[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. Paragraph (a) of this Rule deals with identifying the substantive areas in which a lawyer does or does not practice. This paragraph generally permits a lawyer to state those areas in advertising and other communications about the lawyer's services. For example, if a lawyer practices only in certain fields, or will not accept matters except in such 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. While this Rule contains no per se prohibition against a lawyer stating that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, statements to this effect (like all communications concerning a lawyer's services) are subject to the "false or misleading" standards set out in Rule 7.1. In this connection, it must be recognized that a lawyer who asserts himself or herself as a specialist is not merely identifying the fields of the lawyer's practice, but is also claiming to have a more than average level
of knowledge, skill, and experience in those fields. Moreover, a lawyer's claim to specialist status may affect the standard of care or reasonableness against which the lawyer's conduct or performance is measured in civil, administrative or criminal proceedings.

[2] Paragraph (b) deals with specialty certification. The term "certification" and its variations, when used in connection with an assertion of specialist status, may be misleading because it conveys that the lawyer does not merely claim to be a specialist, but that the lawyer acquired official recognition as a specialist by means of some formal, objective process. Therefore, a lawyer may not communicate, state, suggest or imply that the lawyer has been certified as a specialist in a particular field of law unless expressly permitted by this paragraph. Subparagraph (1) permits the use of patent attorney designations because recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice, as permitted by subparagraph (2), likewise has long historical tradition associated with maritime commerce and the federal courts. Subparagraph (3) permits a lawyer, if certified by the Oklahoma Supreme Court as a specialist in a particular field or practice of law, to communicate that fact in such a manner as the Oklahoma Supreme Court may prescribe by rule. Subparagraph (4) permits a lawyer, if certified as a specialist in a particular field or practice of law by the official licensing authority of another state in which the lawyer is licensed, to communicate that fact in accordance with the rules and requirements of the official licensing authority of such other state. However, in order to prevent any communication made under the permission granted by subparagraph (4) from being misleading, it must also be communicated that the certification granted by the official licensing authority of the other state is not recognized by the Oklahoma Supreme Court.

[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 the 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 speciality area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experiences, 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 LETTERHEAD

(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 it does not imply a connection with a government agency or with a public or charitable legal services organization and 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 or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. 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.

Rule 7.6 POLITICAL CONTRIBUTIONS TO OBTAIN GOVERNMENT LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGE

[Editor’s Note: As is obvious by the fact that the entire Rule 7.6 and its comments are in italics, Oklahoma deleted this ABA MRPC 2003 from its OkRPC. The OkRPC has nothing comparable to Rule 7.6.]

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.
Comment

[1] Lawyers have a right to participate fully in the political process, which includes making and soliciting political contributions to candidates for judicial and other public office. Nevertheless, when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government agency, or to obtain appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit. In such a circumstance, the integrity of the profession is undermined.

[2] The term “political contribution” denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other government office. For purposes of this Rule, the term “political contribution” does not include uncompensated services.

[3] Subject to the exceptions below, (i) the term “government legal engagement” denotes any engagement to provide legal services that a public official has the direct or indirect power to award; and (ii) the term “appointment by a judge” denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge. Those terms do not, however, include (a) substantially uncompensated services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications and cost following a request for proposal or other process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis from a list compiled without regard to political contributions.

[4] The term “lawyer or law firm” includes a political action committee or other entity owned or controlled by a lawyer or law firm.

[5] Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the desire to be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contribution. The purpose may be determined by an examination of the circumstances in which the contributions occur. For example, one or more contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made for the benefit of an official in a position to influence award of a government legal engagement, and followed by an award of the legal engagement to the contributing or soliciting lawyer or lawyer’s firm would support an inference that the purpose of the contributions was to obtain the engagement, absent other factors that weigh against existence of the proscribed purpose. Those factors may include among others that the contribution or solicitation was made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate.

[6] If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, Rule 8.4(b) is implicated.
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 having knowledge 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.

(d) The provisions of Rule 8.3(a) shall not apply to lawyers who obtain such knowledge or evidence while acting as Ethics Counsel or as a member, investigator, agent, employee, or as a designee of the Oklahoma Bar Association Lawyers Helping Lawyers Committee, Judges Helping Judges, or the Management Assistance Program in the course of assisting another lawyer or judge.

Any such knowledge or evidence received by lawyers acting in such capacity shall enjoy the same confidence as information protected by the attorney-client privilege under applicable rule and Rule 1.6.

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 lawyer’s or judge’s 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 the clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyer’s or judge’s 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;

(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.

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 offense 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] Deleted. 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 violated paragraph (d). A trial judge’s finding that preemiptory 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 good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) 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 service 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.
(a) Restrictions on all officers and employees of the executive branch and certain other agencies.--

(1) Permanent restrictions on representation on particular matters.--Any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including any independent agency of the United States), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter--

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

(2) Two-year restrictions concerning particular matters under official responsibility.--Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter--

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and

(C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

(3) Clarification of restrictions.--The restrictions contained in paragraphs (1) and (2) shall apply--

(A) in the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and

(B) in the case of an officer or employee of the District of Columbia, only with respect to communications to or appearances before any officer or employee of any department, agency, or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.

(b) One-year restrictions on aiding or advising.--

(1) In general.--Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress, who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for a period of 1 year.
after his or her service or employment with the United States terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

(2) Definition.--For purposes of this paragraph--

(A) the term "trade negotiation" means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

(B) the term "treaty" means an international agreement made by the President that requires the advice and consent of the Senate.

c One-year restrictions on certain senior personnel of the executive branch and independent agencies.--

(1) Restrictions.--In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) Persons to whom restrictions apply.--

(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))--

(i) employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5,

(ii) employed in a position which is not referred to in clause (I) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule;

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3, or

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O-7 or above.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that--

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

d Restrictions on very senior personnel of the executive branch and independent agencies.--

(Provisions not reproduced.)

e Restrictions on members of Congress and officers and employees of the legislative branch.--

(1) Members of congress and elected officers.--

(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.
(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

(2) Personal staff.--

(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

(i) the Senator or Member of the House of Representatives for whom that person was an employee; and
(ii) any employee of that Senator or Member of the House of Representatives.

(3) Committee staff.--Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and
(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(4) Leadership staff.--

(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and
(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(5) Other legislative offices.--

(A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) Limitation on restrictions.-- (Provision not reproduced.)

(7) Definitions.-- (Provisions not reproduced.)

(f) Restrictions relating to foreign entities.-- (Provisions not reproduced.)
(g) Special rules for detailees.-- (Provision not reproduced.)

(h) Designations of separate statutory agencies and bureaus.-- (Provisions not reproduced.)

(i) Definitions.--For purposes of this section--
(1) the term "officer or employee", when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include--
   (A) in subsections (a), (c), and (d), the President and the Vice President; and
   (B) in subsection (f), the President, the Vice President, and Members of Congress;
(2) the term "participated" means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and
(3) the term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) Exceptions.-- (Provisions not reproduced.)

Whoever, being an officer or employee of the United States or of any department or agency thereof, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filled with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment.

(a) An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney’s duties, to the same extent and in the same manner as other attorneys in that State.
(b) The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.
(c) As used in this section, the term “attorney for the Government” includes any attorney described in Section 77.2(a) of part 77 of title 28 of the Code of Federal Regulations and also includes any independent counsel, or employee of such a counsel, appointed under chapter 40.”

Not later than 180 days after July 30, 2002, the [Securities and Exchange] Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—
(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and
(2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

[Editor’s note: The SEC issued final regulations to implement Section 3007, Sarbanes-Oxley on February 6, 2003. 68 Fed. Reg. 6296-6323 (Feb. 6, 2003). To fully understand Section 307 of the Sarbanes-Oxley Act, a lawyer must carefully and completely read these SEC regulations. These SEC regulations are not set forth in this supplement because they are lengthy but the fact that this Supplement does not print the SEC regulations should not mislead any reader into ignoring these SEC regulations. Readers should also understand that the ABA amended MRPC 1.6 Confidentiality of Information and 1.13 Organization as Client in August 2003 in direct response to the Sarbox regulations of Feb. 2003.]

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Editor’s Note: The following statute, 49 U.S.C. § 1136, is relevant to our discussion about Rules 7.1 through 7.5 relating to lawyer advertising and solicitation.

   (g) prohibited actions. –
   (1) ...
   (2) Unsolicited communications. – In the event of an accident involving an air carrier providing interstate or foreign air transportation and in the event of an accident involving a foreign air carrier that occurs within the United States, no unsolicited communication, concerning a potential action for personal injury or wrongful death, may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.
   (3) ...
RULES GOVERNING ADMISSION TO
THE PRACTICE OF LAW IN THE
STATE OF OKLAHOMA
As amended to current date of supplement

PREAMBLE
Applicants Duty of Candor

Each applicant for admission to the bar has a duty
to be candid and make full, careful and accurate
responses and to disclosures in all phases of the
application and admission process. Each applicant
must respond fully to all inquiries. It is not proper for
an applicant to give either a highly selective or sketchy
description of past events reflecting on the applicant's
qualifications for admission to the bar. An applicant
who violates this duty may be denied admission to the
bar.

Rule 1. Qualifications

To be admitted to the practice of law in the State of
Oklahoma, the applicant:

Section 1. shall have good moral character, due
respect for the law, and fitness to practice law;

Section 2. shall be at least 18 years of age;

Section 3. shall have met all the conditions and
requirements hereinafter set forth which may be
applicable;

Section 4. shall take the following oath and file the
same with the Clerk of the Supreme Court:

"I do solemnly swear that I will support, protect
and defend the Constitution of the United States,
and the Constitution of the State of Oklahoma; that
I will do no falsehood, or consent that any be done
in court, and if I know of any I will give knowledge
thereof to the judges of the court, or some one of
them that it may be reformed; I will not wittingly,
willingly or knowingly promote, sue, or procure to
be sued, any false or unlawful suit, or give aid or
consent to the same; I will delay no person for lucre
or malice, but will act in the office of attorney in all
courts according to my best learning and discretion
with all good fidelity as well to the court as to my
client, so help me God."

Section 5. shall have signed the Roll of Attorneys;
provided, however, that if the applicant is unable, by
reason of absence, to sign the Roll, applicant may grant
the power of attorney to the Administrative Director of
the Board of Bar Examiners to sign said Roll of
Attorneys for applicant.

Rule 2. Admission Upon Motion Without
Examination

For purposes of this Rule, the term “reciprocal state”
shall mean a state which grants Oklahoma judges and
lawyers the right of admission on motion, without the
requirement of taking an examination.

The following persons, when found by the Board of
Bar Examiners to be qualified under Section 1 and 2 of
Rule One, may be admitted by the Supreme Court to
the practice of law in the State of Oklahoma upon the
recommendation and motion of the Board, without
examination:

Section 1. Persons who have been lawfully admitted
to practice and are in good standing on active status in
a reciprocal state, and are graduates of an American
Bar Association approved law school and have
engaged in the actual and continuous practice of law
for at least five of the seven years immediately
preceding application for admission under this Rule.
For the purposes of this section, “practice of law” shall
mean:

(a) Private practice as a sole practitioner or for a law
firm, legal services office, legal clinic or similar entity,
provided such practice was subsequent to being
admitted to the practice of law in the jurisdiction in
which the practice occurred;

(b) Practice as an attorney for a corporation,
partnership, trust, individual or other entity, provided
such practice was subsequent to being admitted to the
practice of law in the jurisdiction in which the practice
occurred and involved the primary duties of furnishing
legal counsel, drafting legal documents and pleadings,
interpreting and giving advice regarding the law, or
preparing, trying or presenting cases before courts,
executive departments, administrative bureaus, or
agencies;
(c) Practice as an attorney for the federal, state, local government (including a territory, district, commonwealth or possession of the United States), branch of the armed services, or sovereign Indian nation with the same primary duties as described in Section 1(b) above;

(d) Employment as a judge, magistrate, referee, or similar official for the federal, state or local government (including a territory, district, commonwealth or possession of the United States); provided that such employment is available only to attorneys;

(e) Full time employment as a teacher of law at a law school approved by the American Bar Association; or

(f) Any combination of the above.

The period of “practice of law” as defined above in subparagraphs 1(a) and 1(b) shall have occurred outside the State of Oklahoma. Applicants for admission without examination shall furnish such proof of practice and licensing as may be required by the Board. No applicant for admission without examination under this rule will be admitted if the applicant has taken and failed an Oklahoma bar examination without having later passed such examination.

Section 2. Applicant shall provide at his or her own expense a report by the National Conference of Bar Examiners.

Section 3. Applications must be upon forms prescribed by the Board of Bar Examiners.

Section 4. It is the purpose of this rule to grant reciprocity to qualified judges and lawyers from other jurisdictions and to secure for Oklahoma judges and lawyers like privileges. If the former jurisdiction of the applicant does not grant to Oklahoma judges and lawyers the right of admission on motion, then this Rule shall not apply and the applicant must, before being admitted to practice in Oklahoma, comply with the provisions of Rule Four. If the former jurisdiction of the applicant permits the admission of Oklahoma judges and lawyers upon motion but the Rules are more stringent and exacting and contain other limitations, restrictions or conditions of admission and the fees required to be paid are higher, the admission of applicant shall be governed by the same Rules and shall pay the same fees which would apply to an applicant from Oklahoma seeking admission to the bar in the applicant’s former jurisdiction.

Section 5. Any person who is admitted to the practice of law in another state who becomes a resident of Oklahoma to accept or continue employment by a person, firm, association or corporation engaged in business in Oklahoma other than the practice of law, whose full time is, or will be, devoted to the business of such employer, and who receives, or will receive, his or her entire compensation from such employer for applicant’s legal services, may be granted a Special Temporary Permit to practice law in Oklahoma, without examination, so long as such person remains in the employ of, and devotes his or her full time to the business of, and receives compensation for legal services from no other source than applicant’s said employer. Upon the termination of such employment or transfer outside the State of Oklahoma, the right of such person to practice law in Oklahoma shall terminate unless such person shall have been admitted to practice law in this state pursuant to some other rule. The application must comply with Section 3 of Rule Two and be accompanied by a certificate from the clerk of the highest appellate court of the state in which the applicant last practiced, showing that applicant has been admitted, and is a member in good standing of the bar of that state; and a certificate from the employer of such applicant showing applicant’s employment by such employer and that applicant’s full time employment will be by such employer in Oklahoma. The Special Temporary Permit shall recite that it is issued under this Rule, and shall briefly contain the contents thereof. Such Special Temporary Permit shall be subject to Rule Ten of these Rules.

Section 6. A person who is admitted to the practice of law in another state, and who is employed as a law professor at an Oklahoma law school accredited by the American Bar Association, may be granted a Special Temporary Permit to practice law in Oklahoma, without examination, while such person is so employed and devotes his or her full time to the teaching of law in such employment. The practice of law under such Special Temporary Permit shall be limited to assisting attorneys licensed in Oklahoma as a consulting or testifying expert, representing clients in a law school clinical program, or providing pro bono services. Upon the termination of such employment, the right of such person to practice law in Oklahoma shall
terminate unless such person shall have been admitted to the practice of law in this state pursuant to some other rule. Compliance with Section 2 of Rule Two is not required, but the application must be accompanied by a certificate from the clerk of the highest appellate court of the state in which applicant last practiced showing that the applicant has been admitted and is a member in good standing of the bar of that state; and a certificate from the Dean or Registrar of that law school employing such applicant, showing the date of the applicant’s employment, the terms of such employment, and the applicant’s professorial rank. Such Special Temporary Permit shall be subject to Rule Ten of these Rules. [The Oklahoma Supreme Court amended Rule Two Section 6 on Nov. 15, 1999.]

**Rule 3. Examination Compulsory**

No person other than those referred to in Rule Two shall be admitted to the practice of law in this state except upon recommendation of the Board of Bar Examiners obtained after such person shall have successfully taken the examination in writing, or as otherwise prescribed. Only those persons possessing the qualifications and fulfilling the conditions hereinafter prescribed shall be permitted to take an examination for admission to the practice of law in the State of Oklahoma.

**Rule 4. Admission by Examination**

Section 1. When examination of an attorney of another jurisdiction is required of one who is not eligible for admission upon motion as provided in Rule Two hereof, such attorney may be permitted by the Board of Bar Examiners to take an examination prescribed in Rule Five upon meeting the requirements of this Rule, except that such attorney shall not be required to register as a law student. However, such attorney shall be required to provide at his or her own expense a report by the National Conference of Bar Examiners.

Section 2. No person shall be entitled to take an examination for admission to practice law in this state unless such person shall have been registered as a law student filing the verified application for registration by the 15th day of March of the year following the year in which applicant first enters law school on forms prescribed by the Board of Bar Examiners setting forth such information as the Board requires, including:

(a) Certificate of graduation with a Bachelor of Arts or Science degree (with a minimum of 120 college hours, at least 90 hours representing resident study) from a college whose credit hours are transferable to the University of Oklahoma, with transcript attached of undergraduate college work;

(b) 2 sets of fingerprints which will be submitted to both the Oklahoma State Bureau of Investigation and the Federal Bureau of Investigation for appropriate record reviews.

(c) Recent photograph.

(d) NCBE Student Application Report for Character and Fitness at his or her own expense.

The Board of Bar Examiners may, in its discretion, register nunc pro tunc students who have been enrolled in a law school accredited by the American Bar Association upon compliance with all applicable rules herein.

The application provided by this section shall be valid for a period of ten (10) years. In the event the applicant has not activated the application within this ten (10) year period, the application will no longer be valid and the file containing the application and required information will be destroyed.

Section 3. Application to take a bar exam shall be filed at least six months prior to the date of examination on forms prescribed by the Board of Bar Examiners setting forth such information as the Board requires. Such application shall contain proof of law school study with a certified transcript attached shown by a certificate of law school dean or registrar that applicant has or will meet the requirements for graduation with a Juris Doctor degree from a law school in the United States of America, its territories and possessions, accredited by the American Bar Association.

A person who matriculates at a law school which was accredited when applicant enrolled therein, and who completes the course of study and is graduated therefrom, shall be deemed a graduate of an accredited
law school, even though the school's accreditation was withdrawn while applicant was enrolled therein.

No applicant may be admitted by examination until he or she shall furnish evidence that a score satisfactory to the Board of Bar Examiners on the Multistate Professional Responsibility Examination has been attained.

Admission must be effected within one year after the date the applicant successfully completes the Bar Examination unless extended by the Board of Bar Examiners.

**Rule 5. Examination**

All applicants for admission by examination who shall have attained a grade of at least 75% in the subject of ["Rules of Professional Conduct"] and who shall attain an average grade of at least 75% on the examination given by the Board of Bar Examiners covering combinations of the subjects hereinafter specified, and who are otherwise qualified under these Rules, shall be recommended by the Board of Bar Examiners for admission to the practice of law in this state.

Any applicant who is otherwise qualified to be recommended for admission to the Bar except by reason of failure to pass satisfactorily the section of the Oklahoma Bar Examination in ["Rules of Professional Conduct"] shall be eligible for re-examination in the subject ["Rules of Professional Conduct"]). Such re-examination shall be conducted by the Board at a time and place to be fixed by the Board and may be written or oral or both. If, upon such re-examination, the applicant receives a satisfactory grade in the subject ["Rules of Professional Conduct"], and is found by the Board to have continued otherwise qualified to be recommended for admission to the Bar, such applicant shall thereupon be so recommended. Any applicant who fails to receive a satisfactory grade upon such re-examination shall be required to re-apply for permission to take a further examination in ["Rules of Professional Conduct"], which may be given at the discretion of the Board.

The following examination shall cover combinations of the following subjects:

1. [Rules of Professional Conduct]

2. Commercial law, to include:
   (a) Contracts
   (b) Uniform Commercial Code
   (c) Consumer Law
   (d) Creditor's rights, including bankruptcy

3. Property

4. Procedural law, to include:
   (a) Pleadings
   (b) Practice
   (c) Evidence
   (d) Remedies (damages, restitution and equity)

5. Criminal Law

6. Business Associations, to include:
   (a) Agency
   (b) Partnerships (including joint ventures)
   (c) Corporations

7. Constitutional and Administrative Law

8. Torts

9. Intestate Succession, wills, trust, estate planning, including federal estate and gift taxation

10. Conflicts of law.

11. Family Law.

There shall be held two bar examinations each year, at dates, times, places and duration to be prescribed by the Board of Bar Examiners.

**Rule 6. Additional Examinations**

In the event of the failure of an applicant to pass any examination, such applicant, if otherwise qualified under these Rules, may be permitted to take any number of subsequent examinations upon filing an additional application with the Board of Bar Examiners.
proving continued good moral character and fitness to practice law at least sixty (60) days prior to each examination.

Rule 7. Fees

The following non-refundable fees shall be paid to the Board of Bar Examiners at the time of the filing of the application:

(a) Registration:
   Regular -- $125.00
   Nunc Pro Tunc -- $450.00;

(b) By each applicant for admission upon motion, the sum of $1,000.00;

(c) By each applicant for admission by examination under Rule 4, S 1:

   FEBRUARY BAR EXAM
   Application filed on or before:
   1 September -- $400
   1 October -- $450
   1 November -- $550

   JULY BAR EXAM
   Application filed on or before:
   1 February -- $400
   1 March -- $450
   1 April -- $550

   (d) By each applicant for a Special Temporary Permit under Rule Two, Section 6, the sum of $750.00;

   (e) By each applicant for admission by a Special Temporary Permit under Rule Two, Section 7, the sum of $100.00;

   (f) By each applicant for a Temporary Permit under Rule Nine, $150.00;

   (g) By each applicant for admission by examination other than those under subparagraph (c) hereof:

   FEBRUARY BAR EXAM
   Application filed on or before:
   1 September -- $250
   1 October -- $300
   1 November -- $400

   JULY BAR EXAM
   Application filed on or before:
   1 February -- $250
   1 March -- $300
   1 April -- $400

As amended by order of May 31, 1994

Rule 8. Request for List of Individual Grades

Any applicant who has failed the bar examination may, upon request, obtain from the Board of Bar Examiners a list showing the grades which were awarded on each question given in said examination and copies of applicant's answers to essay questions. The applicant shall pay a $75.00 processing fee payable to the Board of Bar Examiners. The written request must be made within thirty (30) days following the announcement of results of the examination.

Applicants who have passed the bar examination may not obtain copies of their answers to the essay questions. However, a successful applicant can obtain his Multistate score by making written request to the Board of Bar Examiners, accompanied by a check payable to the Board of Examiners in the amount of $35.00. The request for Multistate score must state the applicant's full name, social security number, and the date the applicant took the bar examination.

Rule 9. Temporary Permits

Temporary permits to practice law until the conclusion of the next succeeding bar examination and report of the results thereof may be granted upon the recommendation of the Board of Bar Examiners after a showing of public convenience and necessity and in the private sector where a case of extreme hardship is shown, provided the applicant has taken and passed the Multistate Professional Responsibility Examination. All applicants for temporary permit to practice law shall file with the Board of Bar Examiners an application for such temporary permit in addition to regular application for admission to the bar examination. The Board shall, as soon as practicable, report its recommendation on such application for temporary permit to the Supreme Court, together with a copy of such application.
Rule 10. Expiration of Temporary Permit

The temporary permit of any person who takes the bar examination shall expire on the date that the successful applicants at that examination are sworn in provided that the temporary permit of any person who fails the bar examination shall be revoked effective immediately upon the announcement of the results of such bar examination by the Administrative director of the Board of Bar Examiners.

Rule 11. Hearing as to Fitness

Section 1. Should the Board of Bar Examiners determine to refuse to grant approval to an applicant to take the Bar Examination, or to refuse to grant an applicant admission to practice without examination, or to refuse to recommend any applicant for admission to practice on any grounds except failure to pass the bar examination, then a written notice shall be mailed to such applicant stating the section (or sections) under Rule One upon which the refusal is based. The notice must adequately inform the applicant of the nature of the evidence against him, although the Board need not list every item and source of information upon which it relies in rejecting the applicant. The initial rejection notice may be modified by the Board prior to the hearing provided for in Section 2 of this rule as long as the applicant has sufficient opportunity to fairly meet the evidence to be introduced against him. Subject to the foregoing, the refusal notice puts in issue all matters which may relate, directly or indirectly, to the applicant's eligibility to practice law in the State of Oklahoma.

Section 2. In the event the applicant wishes to take issue with the Board's decision, applicant shall be entitled to a hearing before the Board by delivering a written request for a hearing to the Board within twenty (20) days after the notice of refusal has been mailed to the applicant. The applicant shall have the right to be represented by counsel, and present evidence, at the time and place fixed by the Board for the hearing. In connection with the hearing, the Board shall have the power to take and hear testimony, administer oaths and affirmations, and, at the request of the applicant or the Board, the Clerk of the Supreme Court of Oklahoma shall issue subpoenas for witnesses and subpoena duces tecum.

Section 3. The Board shall have the power to order a hearing on its own motion either before or after it takes action on any application.

Section 4. The Board shall furnish a certified court reporter to transcribe all proceedings at a hearing under this Rule. However, if the applicant desires a transcript of the proceedings, he or she shall order the transcript from the court reporter at applicant's own expense, and a copy shall be furnished the Board at the appellant's expense.

Section 5. For hearings held under this Rule, a quorum shall consist of five members of the Board of Bar Examiners including the chairman or acting chairman. Any decision must be made by a majority of the members present excluding the chairman who is not a voting member except in the case of a tie vote.

Section 6. The Board's decision upon such hearing shall be made in writing and shall, upon request prior to the commencement of hearing, contain findings of fact and conclusions of law and a copy thereof shall be served upon the applicant or applicant's attorney. An aggrieved party may appeal to the Supreme Court from an adverse decision made pursuant to this Rule Eleven by filing twelve copies of a Notice of Appeal with the Clerk of the Supreme Court of Oklahoma and one copy of a Notice of Appeal with the Board of Bar Examiners. The Notice of Appeal shall set forth the facts and reasons on which it is based and the applicant shall attach to the notice a copy of the findings of fact and conclusions of law made by the Board of Bar Examiners. At the same time the Notice of Appeal is filed, the applicant shall also file a good and sufficient cost bond to be approved by the Clerk of the Supreme Court in an amount sufficient to defray the costs of the appeal, including transcript. The Notice of Appeal and cost bond shall be filed by the applicant with the Clerk of the Supreme Court within thirty (30) days after the Board's order has been served upon applicant. Within sixty (60) days after the Court Reporter has advised the applicant and the Board that the transcript of the Rule Eleven hearing has been completed, the applicant must file twelve copies of applicant's Brief in Chief in support of applicant's request for relief with the Clerk of the Supreme Court and one copy of applicant's Brief in Chief with the Administrative Director of the Board of Bar Examiners. Within forty (40) days after receipt of the applicant's Brief in Chief the Board must file its
Answer Brief with the Clerk of the Supreme Court. Within thirty (30) days after receipt of the Board's Answer Brief, the applicant may file a Reply Brief with the Clerk of the Supreme Court.

Section 7. The burden of establishing eligibility for admission to the Bar of this state, to registration as a law student, or to take an examination, shall rest on the applicant at all stages of the proceedings.

Rule 12. Independent Investigation

In determining the right of any applicant to admission, the Board of Bar Examiners shall have the power to make such independent investigation and require such additional showing as it may deem proper and it shall take into consideration in determining the right of the applicant to admission, such facts as it may have ascertained in such investigation. Any member of the Board participating in such an investigation of an applicant shall not serve in the adjudicatory capacity concerning the applicant.

Rule 13. Denial Under Rule Eleven for Failure to Demonstrate Good Moral Character, Due Respect for the Law, and Fitness to Practice Law -- Minimum Time for Reapplication

If the decision by the Board to deny an application is based, in whole or in part, on the failure of the applicant to demonstrate good moral character, due respect for the law, or fitness to practice law, the applicant may not reapply for admission within a period of sixty (60) months next after the date of mailing the initial rejection notice pursuant to Rule 11, Section 1, unless for good cause shown, a shorter time period is ordered by the Board.

Rule 14. Confidentiality of Records, Investigations, and Results

The Board of Bar Examiners shall not disclose the contents of any records which it maintains on any applicant, including, but not limited to information obtained by the Board in connection with investigations into the moral character of an applicant, and including the results of any such investigation except as follows:

(a) When the Board deems it necessary to disclose to a third party during the course of an ongoing investigation of an applicant to the Board.

(b) In response to a valid subpoena issued by a court of competent jurisdiction having authority under the laws of the State of Oklahoma to issue and enforce subpoenas.

(c) To an admission authority of a bar association, or committee thereof, either state or federal, of any jurisdiction which exercises disciplinary or investigative authority over attorneys or applicants.

(d) Pursuant to an order of the Oklahoma Supreme Court.

An applicant shall have no right to demand disclosure of complaints submitted to the Board or information obtained by the Board in the course of an investigation unless and until the applicant has received notice from the Board pursuant to Section 1 of Rule 11 that his/her OSC file, used or obtained by the Board, not otherwise privileged, which is relevant to the reasons for the denial of the application.

Reports prepared for the Board by its attorney or by an examiner or associate examiner are privileged and are not required to be disclosed to the applicant or third party without an order from the Supreme Court. The Board shall have the right to voluntarily disclose to the applicant any information in the applicant's file.

Nothing set forth in this Rule shall prohibit the Board from refusing to turn over information it deems imprudent to disclose pursuant to a request under subparagraph (c) or from making an objection to the disclosure of information pursuant to subparagraphs (b) or (d) above.

In the event the Board of Bar Examiners provides information pursuant to the provisions of subparagraph (b), (c), or (d) above, the Board shall give the applicant or attorney written notice of such action prior to the disclosure of the information by mailing such notice to the applicant's last known address.

Rule 15.
All rules or regulations governing the subject matter herein covered previously in effect are hereby cancelled, annulled, revoked, and hereafter to be of no force or effect.

OKLA. STAT. tit. 5
CHAPTER 1.--APPENDIX 1-A
RULES GOVERNING
DISCIPLINARY
PROCEEDINGS
Adopted February 23, 1981
as amended to current date of supplement

RULE 1. JURISDICTION OF THE
COURT IN THE DISCIPLINE OF
LAWYERS AND THE
UNAUTHORIZED PRACTICE OF LAW

1.1. Declaration of jurisdiction

This Court declares that it possesses original and exclusive jurisdiction in all matters involving admission of persons to practice law in this state, and to discipline for cause, any and all persons licensed to practice law in Oklahoma, hereafter referred to as lawyers, and any other persons, corporations, partnerships, or any other entities (hereinafter collectively referred to as "persons") engaged in the unauthorized practice of law. This Court further declares that a member of the Bar of this state may not take unto himself any office or position or shroud himself in any official title which will place him beyond the power of this Court to keep its roster of attorneys clean. In the exercise of the foregoing jurisdiction, this Court adopts and promulgates the following rules which shall govern disciplinary and unauthorized practice of law proceedings.

1.2. Implied exceptions negated

The enumeration herein of certain categories of misconduct as grounds for discipline shall not be all-inclusive nor shall the failure to specify any particular act of misconduct be a tolerance thereof by this Court.

1.3. Discipline for acts contrary to prescribed standards of conduct

The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the
1.4. Controversies Regarding Fees

(a) All members of the Bar who are required under the Oklahoma Rules of Professional Conduct, Rule 1.15, to maintain a trust account for the deposit of client's funds entrusted to said attorney, shall do so and furnish evidence thereof as provided for in Rule 1.15. Information received by the Association as a result of such inquiry shall remain confidential unless a grievance is filed against a lawyer which, in the opinion of the Professional Responsibility Commission, may warrant disciplinary action in regard to the handling of said trust account. Failure of any lawyer to respond giving the information requested will be grounds for appropriate discipline.

(b) Controversies as to the amount of fees shall not be considered a basis for charges in a disciplinary proceeding unless it is made to appear that the amount demanded is extortionate or fraudulent.

1.5 Oklahoma Rules of Professional Conduct

This Court has adopted the Oklahoma Rules of Professional Conduct, adopted by American Bar Association acting through its House of Delegates on August 2, 1983, and adopted by the House of Delegates of the Oklahoma Bar Association on November 21, 1986 [effective July 1, 1988,] as subsequently modified by this Court, and as it may hereafter be modified by this Court, as the standard of professional conduct of all lawyers. Any lawyer violating these Rules of Professional Conduct shall be subject to discipline, as herein provided.

1.6. Code of Judicial Conduct

This Court has adopted the Code of Judicial Conduct, as modified by this Court, as a proper guide and reminder for judges and announced candidates for judicial office, and as indicating what the people have a right to expect from them. Complaints against any judge for violating any of the Canons of such Code shall be referred directly to the Chief Justice of this Court for such action as the Court may consider appropriate. Complaints against a judge for misconduct unrelated to the performance of his judicial duties may be referred to the Professional Responsibility Commission for investigation and disciplinary proceedings as herein provided for other lawyers. Nothing herein shall affect proceedings which may be brought against the judge in the Court on the Judiciary. If appropriate, the Supreme Court may suspend proceedings under this Rule, pending conclusion of proceedings in the Court on the Judiciary.

1.7. Discipline

Discipline by the Court shall be disbarment, suspension of a respondent from the practice of law for a definite term or until the further order of the Court, public censure or private reprimand; the Court may, in its discretion, suspend or defer the imposition of discipline subject to the fulfillment of specified conditions by the respondent. This does not preclude the Professional Responsibility Commission from administering a private reprimand to a respondent as provided elsewhere. In fashioning the degree of discipline to be imposed for misconduct, the Professional Responsibility Tribunal and the Court shall consider prior misconduct where the facts are charged in the complaint and proved and the accused has been afforded an opportunity to rebut such charges.

RULE 2. PROFESSIONAL RESPONSIBILITY COMMISSION

2.1. Composition and appointment

The Professional Responsibility Commission of the Oklahoma Bar Association shall consist of seven members, five of whom shall be lawyers who are Active Members in good standing of the Association, appointed by the President of the Association subject to the approval of the Board of Governors, and two of whom shall be non-lawyers who reside in different Congressional Districts, one to be appointed by the Speaker of the Oklahoma House of Representatives, and the other to be appointed by the President Pro Tempore of the Oklahoma State Senate; for the purposes hereof, a non-lawyer is defined as a person who neither holds a law degree nor is licensed to
practice law in any state. The terms of all members shall be for three years, and no member shall serve for more than two full terms. Vacancies shall be filled as provided above. When a member of the Commission is disqualified in a particular proceeding, the appointing authority for such member shall appoint a member pro tempore to act in such matter.

2.2. Organization

The Commission shall organize annually and shall elect from among their number a chairman and a vice-chairman, to serve for a one-year term, and such other officers for such terms as the Commission deems necessary or appropriate.

2.3. Compensation and reimbursement of expenses

Commissioners shall receive no compensation for their services, but shall be reimbursed for their travel and other reasonable expenses incidental to the performance of their duties.

2.4. Meetings

The Commission shall meet regularly at such places and times as it may elect. Special meetings of the Commission may be held at other times, either upon the call of the chairman, or upon the call of three members. Notice of special meetings shall be given at least two days in advance of the day of the meeting, unless waived in writing by a majority of the Commission.

2.5. Removal

A member of the Commission who misses three consecutive regular meetings of the Commission, for whatever reason, shall automatically vacate the office and the vacancy shall be filled as provided in Rule 2.1. The appropriate appointing authority may remove any member for cause. The removal may be the subject of review in this Court in a proceeding brought as a civil appeal.

2.6. Quorum

Four Commissioners shall constitute a quorum of the Commission. Provided that a quorum is present, the affirmative vote of a majority of those present shall suffice to carry any action of the Commission.

2.7. Financing

Funds shall be provided on an annual basis in the budget of the Oklahoma Bar Association approved by the Supreme Court, and appropriated from the revenues of the Association by the Board of Governors, to be used by the Commission and the Professional Responsibility Tribunal in the discharge of their responsibilities imposed herein.

2.8. Duties and powers

The Commission shall exercise the powers and perform the duties conferred and imposed upon it by these Rules, specifically including the following:

(a) To consider and investigate any alleged ground for discipline, or alleged incapacity, of any lawyer or any instance of the unauthorized practice of law called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effectuate the purposes of these Rules.

(b) In its investigations, to hold hearings, and to administer oaths or affirmations, receive testimony and other evidence, and issue and serve or cause to be served subpoenas requiring testimony or the production of books, records, papers, documents or other tangible evidence. Oaths or affirmations may be administered by the chairman or vice-chairman of the commission, or by any officer authorized by law to administer oaths. Subpoenas shall be issued by the chairman or vice-chairman of the Commission upon his/her approval; witnesses shall be paid, upon demand, mileage and witness fees as provided by the law in civil cases.

(c) Whenever any person (except the respondent in a case where his answer may not be compelled under Rule 2.8(d) below) subpoenaed or ordered to appear by the Commission to give testimony, or to produce books, records, papers, documents or other tangible evidence, fails to comply, or whenever any person (except the respondent pursuant to Rule 2.8(d) below), present at a hearing, refuses to testify or to answer any proper question or to obey any proper order, the Commission may enforce compliance with its directions or orders as hereinafter provided. It may take such steps as are necessary to maintain order in its
sessions. In the event of contemptuous refusal to obey its lawful orders, it shall certify the matter to the Chief Justice of the Supreme Court, who shall assign the case for trial and appropriate disposition to a judge of a district court. In such proceeding, the General Counsel shall act as prosecutor against the alleged contemnor.

(d) To require lawyers and other persons to respond or give testimony in connection with Commission investigations, and when a lawyer-respondent is called upon to answer or give testimony, the respondent shall make specific and complete disclosure as to all material matters unless the respondent shall personally state that he declines to answer any particular question on the grounds that his answers might disclose matters that are privileged or that would tend to incriminate him or show him guilty of an act or an offense that would be grounds for discipline.

(e) To adopt appropriate procedural rules governing the manner in which it discharges its responsibilities hereunder.

(f) Canon Five (E) of the Code of Judicial Conduct provides: “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 his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct.”

The Board of Governors of the Oklahoma Bar Association is therefore directed to forthwith establish a Professional Responsibility Panel on Judicial Elections composed of three (3) members whose responsibility shall be to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The membership of the Panel shall consist of a member of the Oklahoma Bar Association, in good standing who shall have been a member of that Association for at least twenty-five (25) years; a member of the Judicial Ethics Advisory Panel; and one lay person. The objective of such Panel shall be to alleviate unethical campaign practices, and to that end, the Panel shall have the following authority:

1. To receive written complaints, which must be signed and verified, or otherwise receive information facially indicating a violation of any provision of Canon 5 during the course of a campaign for judicial office;

2. Conduct such additional investigation as the Panel may deem necessary with the assistance of General Counsel;

3. Determine whether the allegations of the complaint warrant speedy intervention, and after notice to the person or persons complained against and hearing, issue a confidential cease-and-desist request to the candidate or organization believed to be engaging in unethical behavior and/or campaign practices in violation of Canon 5; and if not, to dismiss the complaint and so notify the complaining party;

4. If a cease-and-desist request is disregarded or if the unethical or unfair campaign practices otherwise continue, the Panel is authorized to refer the matter to the General Counsel of the Oklahoma Bar Association or the Council on Judicial Complaints for such action as may be appropriate under the applicable rules.

All proceedings under this Rule shall be informal and non-adversarial, and the Panel shall act on all complaints as expeditiously as possible either in person, by facsimile, by U.S. Mail, or by teleconference.

The proceedings of this Panel shall remain confidential, and in no event, shall the Panel have the authority to institute disciplinary proceedings against any candidate for judicial office, which power is specifically reserved to the Council on Judicial Complaints or the Oklahoma Bar Association, as the facts may indicate.

Rule 2.8(f) shall become effective on October 5, 1998.

2.9. Transitional provisions

(a) The members of the Commission serving as such at the time of the adoption of these Rules shall continue to so serve until the expiration of their respective terms or their earlier death or resignation. However, when a vacancy occurs for any reason, the new member appointed shall be a non-lawyer appointed by the President Pro Tempore of the Oklahoma State Senate, and the next vacancy which
occurs for a term expiring in a different year from that of the initial non-lawyer member shall be filled by a non-lawyer appointed by the Speaker of the Oklahoma House of Representatives.

(b) The adoption of these Rules shall not affect any matters pending, rules and procedures adopted, or actions heretofore taken by the presently existing Professional Responsibility Commission, which shall continue to function, subject to the provisions of these Rules.

RULE 3. GENERAL COUNSEL

3.1. Employment

The Board of Governors with the concurrence of the Professional Responsibility Commission shall employ and discharge the General Counsel of the Oklahoma Bar Association.

3.2. Duties

The General Counsel of the Oklahoma Bar Association shall have the following powers and duties in the area of discipline under these Rules:

(a) With the approval of the Commission, to employ and supervise staff needed for the performance of the duties of the office;

(b) To investigate all matters involving possible misconduct or alleged incapacity of any lawyer, or the unauthorized practice of law, called to the General Counsel's attention by complaint or otherwise;

(c) To report to the Commission the results of investigations made by or at the direction of the General Counsel, and to make recommendations to the Commission concerning the institution of formal complaints for alleged misconduct or personal incapacity of lawyers;

(d) To prosecute all proceedings under these Rules;

(e) To appear at hearings conducted with respect to petitions for reinstatement of suspended or disbarred lawyers or lawyers suspended for incapacity to practice law, to cross-examine witnesses testifying in support of such petitions, and to marshal and present available evidence, if any, in opposition thereto;

(f) To file with the Supreme Court certificates of conviction of lawyers for crimes;

(g) To maintain permanent records of all active and inactive discipline and disability matters, subject to the expungement requirements of Rule 3.2(h) as follows:

(1) All inactive disciplinary matters where a formal complaint has been filed with the Supreme Court, shall be maintained indefinitely;

(2) All inactive disciplinary matters where a member has resigned pending disciplinary proceedings or pending investigation which might result in disciplinary proceedings, shall be maintained indefinitely;

(3) All inactive disciplinary matters where a private reprimand has been issued by the Professional Responsibility Commission shall be maintained indefinitely;

(4) All inactive disciplinary matters where the General Counsel's Office has investigated a grievance and reported the grievance to the Professional Responsibility Commission or its predecessor for action, shall be maintained for a period of three (3) years from the date the grievance is made inactive;

(5) All inactive disciplinary matters where the General Counsel has disposed of the grievance by informal procedures, shall be maintained for a period of three (3) years from the date the grievance is made inactive;

(h) To expunge after three (3) years all records of the Commission relating to grievances terminated by dismissal, except that the General Counsel shall retain a docket showing the names of each respondent and complainant, the final disposition, and the date all records relating to the matter were expunged, except that the General Counsel may, prior to the expiration of the three (3) years, apply to the Commission for an additional three (3) years which application shall be granted upon a showing of good cause and with notice
to respondent; expunge other grievances as directed by the Commission pursuant to Rule 5.3(b).

(i) To use the services of other members of the Oklahoma Bar Association (including, but not limited to, any state or county Bar grievance committee) in carrying out the duties imposed upon the General Counsel concerning the general supervision of all disciplinary matters affecting lawyers.

3.3 Grievances against the General Counsel of the Association Staff, Professional Responsibility Tribunal and Supreme Court.

(a) Whenever a grievance is filed, or information is received by the Commission which could lead to the filing of a formal complaint against the General Counsel of the Association, the members of the Commission and the President and the Executive Director of the Association shall immediately be notified.

(b) The General Counsel shall disqualify himself from all further participation in the investigation and determination of the matter, and the chairman of the Commission, or in the event of the chairman's absence or inability to act, the vice-chairman, shall appoint a lawyer-member of the Commission, or the Commission shall retain outside counsel, to act in the place of the General Counsel in the investigation and determination of the matter, and in its subsequent prosecution, in the event formal proceedings before a panel of the Professional Responsibility Tribunal result.

(b) If a disciplinary grievance is made against:

(1) The General Counsel or member of General Counsel's staff, the Professional Responsibility Commission shall appoint a special counsel to investigate and present the case;

(2) A member of the Professional Responsibility Commission, the President of the Oklahoma Bar Association with concurrence of the Board of Governors, shall appoint a special three-member Commission to act on the grievances in conformance with these Rules.

(3) A member of the Professional Responsibility Tribunal, all procedures mandated by these Rules shall be followed, except the Supreme Court shall appoint a special Tribunal Panel to hear the case in the event formal charges are filed.

(4) A member of the Supreme Court, the matter shall be referred to the Oklahoma Council on Judicial Complaints.

(c) The President and the Executive Director of the Association shall be kept fully informed of all action taken by the Commission in the matter.

3.4 Disqualification of General Counsel

(a) Voluntary Disqualification. Whenever the General Counsel of the Association for any reason feels that it would be inappropriate for the General Counsel to participate in the investigation and determination of a matter, the General Counsel shall notify the chairman of the Commission, and the procedure described in Rule 3.3(b) shall be followed.

(b) Disqualification Upon Request. Whenever any lawyer subject to investigation on disciplinary grounds, or counsel for such a lawyer, shall seek the disqualification of the General Counsel in any matter, the lawyer seeking such disqualification shall submit, in writing, the basis for the request. If the General Counsel thereafter continues to refuse to disqualify himself voluntarily, then the Commission shall determine whether or not such disqualification will be required. If the Commission requires the disqualification of the General Counsel, the procedure described in Rule 3.3(b) shall be followed.

(c) If during the prosecution of a formal complaint, a motion to disqualify the General Counsel is filed, the Professional Responsibility Tribunal shall hear the matter. Disqualification shall be ordered only if sufficient evidence is presented that the General Counsel should be disqualified.

3.5. Special Trial Attorneys
At the request of the General Counsel, the Professional Responsibility Commission may retain one or more members of the Association to serve as prosecutor(s) in a particular proceeding.

RULE 4. PROFESSIONAL RESPONSIBILITY TRIBUNAL

4.1. Composition and appointment

There is hereby established a panel of Masters to be known as the Professional Responsibility Tribunal, which shall consist of twenty-one members, fourteen of whom shall be lawyers who are Active Members in good standing of the Oklahoma Bar Association, and seven shall be non-lawyers. Provided, however, that said Professional Responsibility Tribunal may be increased in size by the Chief Master with the concurrence of the Board of Governors to a level adequate to effectively provide the trial panels necessary to prosecute all proceedings under these rules. That the additional panel(s) of Masters shall be appointed pursuant to the same conditions and restrictions as hereinafter set forth. For the purposes hereof, a non-lawyer is defined as a person who neither holds a law degree nor is licensed to practice law in any state, and no more than two of the non-lawyer members may reside in the same Congressional District. The lawyer members shall be appointed by the President subject to the approval of the Board of Governors. The non-lawyer members shall be appointed by the Governor of the State of Oklahoma. The members of the Tribunal shall have staggered terms, with five lawyer and two non-lawyer members appointed for initial terms of three years, five lawyer and two non-lawyer members appointed for initial terms of two years, and four lawyer and three non-lawyer members appointed for initial terms of one year. Subsequent terms of all members shall be for three years. No member shall serve for more than two full terms. Vacancies shall be filled as provided above. If because of disqualifications in a particular proceeding, a hearing panel cannot be constituted, the Chief Master or Vice Chief Master may request the appropriate appointing authority to appoint a member or members pro tempore to act in such matter.

4.2. Organization

The Professional Responsibility Tribunal shall organize annually and shall elect from among their number a Chief Master and Vice-Chief Master, to serve for a one-year term, and such other officers for such terms as the Tribunal deems necessary or appropriate.

4.3. Removal

A member of the Tribunal may be removed for cause by the appointing authority, and the resulting vacancy shall be filled by the authority who originally appointed such member. The removal may be the subject of review in this Court in a proceeding brought as a civil appeal.

4.4. Compensation and reimbursement of expenses

The members of the Tribunal shall receive no compensation for their services, but shall be reimbursed for their travel and other reasonable expenses incidental to the performance of their duties.

4.5. Duties and powers

(a) The function of the Tribunal shall be to conduct hearings on formal complaints filed against lawyers, and on applications for reinstatement to the practice of law.

(b) The Tribunal may adopt appropriate procedural rules governing the conduct of proceedings before it, which shall include provisions for requests for disqualification of members of the Tribunal assigned to hear proceedings.
RULE 5. FILING AND PROCESSING OF GRIEVANCES AND REQUESTS FOR INVESTIGATION

5.1. Form of grievances and requests for investigation

(a) Each grievance or request for investigation (grievances and requests for investigation both being hereinafter referred to as a "grievance") involving a lawyer or involving the unauthorized practice of law shall be in writing and signed by the person filing the same, except that the General Counsel or the Commission may, in their discretion, institute an investigation on the basis of facts or allegations involving a lawyer or the unauthorized practice of law brought to their attention in any manner whatsoever. A lawyer or any other person will be immediately notified of the receipt of a grievance and furnished a copy thereof.

(b) In matters involving allegations of the unauthorized practice of law, the General Counsel shall make such investigation as is otherwise provided herein, and may request any involved person who is not a lawyer to make a voluntary response to the allegations of the unauthorized practice of law. The provisions of this Rule requiring a mandatory response to the General Counsel shall not be applicable to nonlawyers.

5.2. Investigations

After making such preliminary investigation as the General Counsel may deem appropriate, the General Counsel shall either (1) notify the person filing the grievance and the lawyer that the allegations of the grievance are inadequate, incomplete, or insufficient to warrant the further attention of the Commission, provided that such action shall be reported to the Commission at its next meeting, or (2) file and serve a copy of the grievance (or, in the case of an investigation instituted on the part of the General Counsel or the Commission without the filing of a signed grievance, a recital of the relevant facts or allegations) upon the lawyer, who shall thereafter make a written response which contains a full and fair disclosure of all the facts and circumstances pertaining to the respondent lawyer's alleged misconduct unless the respondent's refusal to do so is predicated upon expressed constitutional grounds. Deliberate misrepresentation in such response shall itself be grounds for discipline. The failure of a lawyer to answer within twenty (20) days after service of the grievance (or recital of facts or allegations), or such further time as may be granted by the General Counsel, shall be grounds for discipline. The General Counsel shall make such further investigation of the grievance and response as the General Counsel may deem appropriate before taking any action.

5.3. Action by Commission

Upon the completion of the investigation, the General Counsel shall make a report and recommendation to the Commission on each grievance. The Commission, upon consideration of the report and recommendation of the General Counsel, and further investigation if deemed advisable, shall either:

(a) Direct that no formal disciplinary proceedings be commenced, in which event the General Counsel shall advise the person filing the grievance that the factual circumstances do not warrant further investigation or disciplinary action;

(b) If, after a disciplinary action has been commenced, the Commission finds the grievance is wholly frivolous or without merit, it shall direct the immediate expungement of any grievance, and upon such expungement, respondent against whom such frivolous grievance has been filed and expungement has been ordered by the Commission, may treat the grievance as if it was never asserted. Provided, however, that said expungement shall not occur until sixty (60) days after the date of notification to the complainant of that decision.

(c) Direct that a letter of admonishment be written to the respondent by the General Counsel

(d) Direct that no formal proceedings be instituted against the respondent, conditioned upon the respondent's acceptance of a private reprimand before the Commission, and in such event, the respondent shall be notified to appear before the Commission at a time and place to be fixed in the notice for the purpose of receiving a private reprimand. If the respondent
does not appear at the time and place so fixed in such notice, the Commission may give further consideration to the advisability of filing a formal complaint; or

(e) Direct the filing of a formal written complaint with the Supreme Court by the General Counsel within thirty (30) days of the vote of the Commission, unless the Commission grants an extension of time for reasonable cause.

(f) In matters involving the unauthorized practice of law, the Professional Responsibility Commission shall either dismiss the grievance or direct the General Counsel to initiate any action permitted by law through the appropriate court.

In addition to, or in lieu of, one of the foregoing actions, the Professional Responsibility Commission may direct the General Counsel to refer the name of the respondent to the Lawyers Helping Lawyers Committee of the Oklahoma Bar Association, and such referral shall not be deemed to be a violation of Rule 5.7. The referral will be made to the Lawyers Helping Lawyers Committee for possible assistance to the member without reference to the source or subject matter of the complaint, provided that such referral will not delay the disposition of the complaint under these rules, unless for good cause shown.

5.4. Grievances Privileged

Matters contained in grievances submitted to the Association, the Commission or the General Counsel, and statements, oral or written, with respect thereto, shall be privileged. Litigation or the threat of litigation by a respondent lawyer against a person filing a grievance by reason of such filing may be grounds in itself for discipline.

5.5. Continuation of proceeding notwithstanding failure to prosecute, withdrawn or settlement of grievance

Neither unwillingness nor neglect of the person filing the grievance to sign a grievance, or to prosecute a charge, nor the settlement or compromise of the dispute between the person filing the grievance and the lawyer, or restitution by the lawyer, shall of itself require abatement of the processing of any grievance, and the termination of such processing shall be at the sole discretion of the Commission.

5.6. Pending litigation

Processing of grievances shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, or administrative proceedings, unless authorized by the Commission in its discretion, for good cause shown.

5.7. Confidentiality of disciplinary investigations and results

Investigations by the General Counsel and the Commission shall be confidential, and the results thereof shall not be made public until authorized by the Supreme Court or as provided in Rule 6.1. However, when no formal complaint is filed in the Supreme Court, at the option of the respondent, the final disposition of a grievance by the Professional Responsibility Commission may be made public. In all cases the person who filed a grievance and the respondent shall be notified of the final disposition thereof.

5.8. Confidentiality of disciplinary records

The files and records in disciplinary investigations shall be kept private and confidential except that the Commission, the Professional Responsibility Tribunal or the General Counsel shall be permitted to provide relevant information contained in such files and records to the following:

(a) Any court or bar association or committee thereof, either state or federal, of any jurisdiction which exercises disciplinary authority over attorneys.

(b) Any grievance committee of the Association or any grievance committee of any state or county bar association (whether in or outside Oklahoma) which is investigating or has investigated a complaint against the lawyer, or whose investigation of another lawyer necessitates such information.

(c) To the Client Security Fund Committee of the Association when necessary for the Committee's determination of a pending claim.
(d) Any law enforcement agency which makes a proper showing that such information is necessary to the conduct of a pending investigation, with notice to the lawyer.

5.9. Proceedings which are to be a matter of public record

All proceedings brought under the provisions of Rules 6, 7, 8 and 11 of these Rules shall be filed with the Clerk of the Supreme Court and be a matter of public record at all times, except as limited by Rule 5.7.

RULE 6. FORMAL PROCEEDINGS BEFORE SUPREME COURT AND PROFESSIONAL RESPONSIBILITY TRIBUNAL

6.1. Manner of Instituting

Formal proceedings in matters involving misconduct by lawyers shall be brought by direction of the Professional Responsibility Commission.

The proceeding shall be initiated by a formal complaint prepared by the General Counsel, approved by the Commission, signed by the chairman or vice-chairman of the Commission, and filed with the Chief Justice of the Supreme Court. Upon the expiration of the respondent's time to answer, the complaint and the answer, if any, shall thereupon be lodged with the Clerk of the Supreme Court and the complaint, as well as all further filings and proceedings with respect thereto, shall be a matter of public record. Nine copies shall be filed with each original instrument.

6.2 Contents of formal complaint

The complaint shall set forth the specific facts constituting the alleged misconduct, and if prior conduct resulting in discipline, or evidence from prior investigations, is relied upon to enhance discipline, the prior acts or conduct relied upon shall be set forth.

Rule 6.2A Emergency Interim Suspension Orders and Related Relief

(1) Verified Complaint and Service.

The General Counsel, with the concurrence of the chairperson or vice-chairperson of the Professional Responsibility Commission, upon receipt of sufficient evidence demonstrating that a lawyer subject to these Rules has committed conduct in violation of the Oklahoma Rules of Professional Conduct, or is personally incapable of practicing law as set forth in Rule 10 hereof, and where such conduct poses an immediate threat of substantial and irreparable public harm, may file a verified complaint in accordance with Rule 6 hereof requesting interim suspension and other appropriate relief. A copy of the complaint shall be served personally or by certified mail, return receipt requested, upon the respondent by General Counsel; provided that if a respondent refuses to sign for, or otherwise does not claim the certified mail, then the General Counsel may serve the complaint and any further papers, notices and orders in accordance with Rule 13.1 hereof.

(2) Immediate Interim Suspension

(a) Upon filing of the verified complaint, the Court may issue an order directing the respondent to object and show cause within ten (10) days why such order of interim suspension should not be entered.

(b) In the event such an objection is timely filed, the matter shall be set for hearing at the earliest possible time. Such hearing may be before the Court, any Justice thereof, or the Court may refer the matter to the Professional Responsibility Tribunal for hearing and recommendations.

(3) Related Relief

(a) Any order of interim suspension may include such orders to the respondent as may be necessary to preserve and recover funds and other property of respondent's clients or other persons, and the Court may, upon its own motion or upon application of the General Counsel, issue an order authorizing the General Counsel to initiate proceedings in the appropriate court to obtain an order to preserve any such funds maintained in a financial institution or elsewhere.

(b) In the event that the respondent does not file an objection to the order as set forth in Rule 6.2A(2)(b) above, or in the event that such an objection is timely
filed, but, after hearing on the matter, the order is entered, and the Court may, upon its own motion or upon application of the General Counsel:

(i) require the respondent to give written notices to affected clients and otherwise comply with Rule 9.1 hereof with ten (10) days of the hearing or, where no timely objection to the order was filed, within ten (10) days of the expiration of the time for filing such an objection; and/or,

(ii) issue an order requiring the appointment of an attorney(s) to wind up the respondent's business in accordance with Rule 9.3 hereof.

(4) Further Proceedings - Accelerated Disposition. In addition to the above, the respondent shall file an answer to the complaint with the Chief Justice pursuant to Rule 6.4, and, except as provided above, all proceedings thereafter shall be conducted in accordance with the Rules Governing Disciplinary Proceedings where no interim suspension is sought; provided that, the respondent may include in his/her answer a request for accelerated disposition, and, thereafter, the entire proceedings shall be concluded by the Professional Responsibility Tribunal and the Court without appreciable delay.

6.5. Amendment of complaint

After the complaint has been filed, the General Counsel may amend the complaint to add or delete allegations as permitted under the general rules of civil procedure, subject to the respondent's right to file an answer within twenty (20) days after such amendment.

6.6. Trial Panel

Within ten (10) days after receiving notice of the filing of a complaint, the Chief Master (or Vice-Chief Master if the Chief Master is absent or otherwise fails to act within such period) of the Professional Responsibility Tribunal shall select three members thereof to serve as a trial panel of Masters (hereinafter referred to as "Trial Panel"), two of whom shall be lawyers and one shall be a non-lawyer, to hear the complaint. The Chief Master (or Vice-Chief Master) shall further designate one of the two lawyer-members of the Trial Panel to serve as Presiding Master. Two of the three Masters shall constitute a quorum for the purposes of conducting hearings, ruling on and receiving evidence, and rendering Findings of Fact and Conclusions of Law.

6.7. Setting and notification of hearing

The Chief Master or Vice-Chief Master of the Professional Responsibility Tribunal shall notify the respondent and the General Counsel of the appointment and membership of the Trial Panel and of the time and place for hearing, which shall not be less than thirty (30) nor more than sixty (60) days from the date of appointment of the Trial Panel. Extensions of this period may be granted by the Chief Master (or the Vice-Chief Master, in case of the unavailability of the Chief Master) for good cause shown.

6.8. Depositions and discovery

(a) Depositions may be taken and read, and documents and things may be required to be produced for inspection and/or copying, in the same manner as in civil cases; and

(b) Upon written request made fifteen (15) days before the trial of the cause, the respondent or his attorney shall be given the names and addresses of witnesses to be used by the prosecution.; and
(c) The General Counsel, with the approval of the Professional Responsibility Commission, shall have the authority to enter into stipulation of fact and law concerning a formal complaint against a respondent lawyer, and a recommendation as to discipline to be imposed.

6.9. Hearing open to public

Hearings before the Trial Panel and the Supreme Court in disciplinary proceedings shall be open to the public.

6.10 Record of proceedings

Proceedings before the Trial Panel shall be stenographically recorded and transcribed unless the facts are stipulated.

6.11. Powers of Trial Panel in conduct of proceeding

(a) The Trial Panel shall have the power and authority to: Administer oaths and affirmations and hear evidence, and compel, by subpoena, the attendance of witnesses and the production of books, records, papers, documents or other tangible evidence, either for deposition or for trial; witnesses shall be paid, upon demand, mileage and witness fees as provided by the law in civil cases.

(b) Oaths or affirmations may be administered, and subpoenas may be issued, by the Presiding Master, or by any officer authorized by law to administer an oath or issue subpoenas.

(c) Whenever any person (except the respondent in a case where his answer may not be compelled under Rule 6.11(d) below) subpoenaed or ordered to appear by the Trial Panel to give testimony, or to produce books, records, papers, documents or other tangible evidence, fails to comply, or whenever any person (except the respondent pursuant to Rule 6.11(d) below), present at a hearing, refuses to testify or to answer any proper question or to obey any proper order, the Trial Panel may enforce compliance with its directions or orders as hereinafter provided. It may take such steps as are necessary to maintain order in its sessions. In the event of contemptuous refusal to obey its lawful orders, it shall certify the matter to the Chief Justice of the Supreme Court, who shall assign the case for trial and appropriate disposition to a judge of a district court. In such proceeding, the General Counsel shall act as prosecutor against the alleged contemnor.

(d) The respondent may be called as a witness either by the prosecution or on his own behalf, and when called upon to give testimony, the respondent may not decline to answer any relevant question unless he personally states his answer thereto might disclose matters that are privileged or that would tend to incriminate him or show him to be guilty of any act or offense that would be grounds for discipline.

6.12. Evidence, procedure and standard of proof

(a) So far as practicable, the disciplinary proceedings and the reception of evidence shall be governed by the rules in civil proceedings, except as otherwise herein provided; the respondent shall be entitled to be represented by counsel.

(b) On a charge of solicitation of professional employment through a lay person or agency, it shall not be necessary to prove that such lay person or agency received compensation.

(c) To warrant a finding against the respondent in a contested case, the charge or charges must be established by clear and convincing evidence, and at least two of the members of the Trial Panel must concur in the findings.

6.13. Report by Trial Panel

Within thirty (30) days after the conclusion of the hearing, the Trial Panel shall file with the Clerk of the Supreme Court a written report which shall contain the Trial Panel's findings of fact on all pertinent issues and conclusions of law (including a recommendation as to discipline, if such is found to be indicated, and a recommendation as to whether the costs of the investigation, record and proceedings should be imposed on the respondent), and shall be accompanied by all pleadings, a transcript of the proceeding, and all exhibits offered thereat. A copy of the Report is concurrently to be served on the General Counsel, the respondent and his attorneys (if any). The thirty (30)
day period referred to above may be extended only by
the Chief Justice, for good cause shown.


Upon receipt of the Report of the Trial Panel, the
Chief Justice of the Supreme Court shall set dates for
submissions of briefs. The total amount of time
allocated for submission of briefs will not exceed sixty
(60) days after receipt of the report of the Trial Panel.
The Supreme Court will consider these matters on an
accelerated basis.

6.15. Decision by Supreme Court

(a) The Supreme Court may approve the Trial
Panel's findings of fact or make its own independent
findings, impose discipline, dismiss the proceedings or
take such other action as it deems appropriate.

(b) Notice of the action or decision of the Supreme
Court shall be given by the Clerk to the respondent, the
Professional Responsibility Tribunal, the General
Counsel and the Professional Responsibility
Commission.

(c) Petitions for rehearing on behalf of the
Respondent or the Association shall be filed with the
Clerk of the Supreme Court within twenty (20) days
from the date of mailing of the action or decision of the
Supreme Court.

6.16. Cost of investigations and disciplinary
proceedings where discipline results

The costs of investigation, the record, and
disciplinary proceedings shall be advanced by the
Oklahoma Bar Association (or the Professional
Responsibility Commission, if provision therefor has
been made in its budget). Where discipline results, the
cost of the investigation, the record, and the
disciplinary proceedings shall be surcharged against the
disciplined lawyer unless remitted in whole or in part
by the Supreme Court for good cause shown. Failure
of the disciplined lawyer to pay such costs within
ninety (90) days after the Supreme Court's order
becomes effective shall result in automatic suspension
from the practice of law until further order of the
Court.

RULE 7. SUMMARY DISCIPLINARY
PROCEEDINGS BEFORE
SUPREME COURT

7.1. Criminal conviction of lawyer

A lawyer who has been convicted in any jurisdiction
of a crime which demonstrates such lawyer's unfitness
to practice law, regardless of whether the conviction
resulted from a plea of guilty or nolo contendere or
from a verdict after trial, shall be subject to discipline
as herein provided, regardless of the pendency of an
appeal.

7.2. Transmittal of record relating to conviction

The clerk of any court within this state in which a
lawyer is convicted shall transmit certified copies of
the indictment or information and judgment and
sentence of conviction to the Chief Justice of the
Supreme Court and to the General Counsel of the
Oklahoma Bar Association within five (5) days after
said conviction. The documents may also be furnished
to the Chief Justice by the General Counsel. Such
documents, whether from this jurisdiction or any other
jurisdiction, shall constitute the charge and be
conclusive evidence of the commission of the crime
upon which the judgment and sentence is based and
shall suffice as the basis for discipline in accordance
with these rules.

7.3. Interim suspension from practice

Upon receipt of the certified copies of such
indictment or information and the judgment and
sentence, the Supreme Court shall by order
immediately suspend the lawyer from the practice of
law until further order of the Court. In its order of
suspension the Court shall direct the lawyer to appear
at a time certain, to show cause, if any he has, why the
order of suspension should be set aside. Upon good
cause shown, the Court may set aside its order of
suspension when it appears to be in the interest of
justice to do so, due regard being had to maintaining
the integrity of and confidence in the profession.

7.4. Conviction becoming final without appeal

If the conviction becomes final without appeal, the
General Counsel of the Oklahoma Bar Association
shall inform the Chief Justice and the Court shall order the lawyer, within such time as the Court shall fix in the order, to show cause in writing why a final order of discipline not be made. The written return of the lawyer shall be verified and expressly state whether a hearing is desired. The lawyer may in the interest of explaining his conduct or by way of mitigating the discipline to be imposed upon him, submit a brief and/or any evidence tending to mitigate the severity of discipline. The General Counsel may respond by submission of a brief and/or any evidence supporting his recommendation of discipline.

7.5. Appeal of conviction

If an appeal is perfected from the judgment of conviction and such judgment is reversed, the disciplinary proceedings based upon such conviction shall be dismissed immediately. If the judgment of conviction is affirmed on appeal, or the judgment is affirmed as modified and the lawyer remains convicted of a crime which demonstrates a lawyer's unfitness to practice law, the same procedure for making final disposition of the matter shall apply as provided in Rule 7.4.

7.6. Disciplinary proceedings based upon same facts as criminal proceeding

Nothing contained herein shall prevent the Professional Responsibility Commission from initiating and conducting disciplinary proceedings upon charges identical to those set forth in a criminal complaint, indictment, or information, notwithstanding the pendency or final disposition of the criminal action. In such event, certified or authenticated copies of the record and transcripts of testimony and evidence from the criminal action will be admissible in the disciplinary proceeding whether for or against the lawyer.

7.7. Disciplinary action in other jurisdictions, as basis for discipline

(a) It is the duty of a lawyer licensed in Oklahoma to notify the General Counsel whenever discipline for lawyer misconduct has been imposed upon him/her in another jurisdiction, within twenty (20) days of the final order of discipline, and failure to report shall itself be grounds for discipline. (b) When a lawyer has been adjudged guilty of misconduct in a disciplinary proceeding, except contempt proceedings, by the highest court of another state or by a Federal Court, the General Counsel of the Oklahoma Bar Association may cause to be transmitted to the Chief Justice a certified copy of such adjudication and the Chief Justice shall direct the lawyer to appear before the Supreme Court at a time certain, not less than ten (10) days after mailing of notice, and show cause, if any he/she has, why he/she should not be disciplined. The documents shall constitute the charge and shall be prima facie evidence the lawyer committed the acts therein described. The lawyer may submit a certified copy of the transcript of the evidence taken in the trial tribunal of the other jurisdiction to support his/her claim that the finding therein was not supported by the evidence or that it does not furnish sufficient grounds for discipline in Oklahoma. The lawyer may also submit, in the interest of explaining his/her conduct or by way of mitigating the discipline which may be imposed upon him/her, a brief and/or any evidence tending to mitigate the severity of discipline. The General Counsel may respond by submission of a brief and/or any evidence supporting a recommendation of discipline.

7.8 Noncompliance with an Order of Support

A lawyer who has been determined by a judicial finding to be in willful noncompliance with an order of support, pursuant to 43 O.S. § 139.1 and which finding has been reported to the Oklahoma Bar Association by a Judge of the District Court in accordance with the provisions of 43 O.S. § 139.1(B)(2), may be subject to discipline as herein provided.

Rule 7.9 Transmittal of Record Relating to Finding of Noncompliance with an Order of Support

If a Judge makes a finding of willful noncompliance with an order of support, pursuant to 43 O.S. §139.1, the Judge shall direct that a certified copy of the order or judgment containing a finding of such noncompliance be mailed to the General Counsel of the Oklahoma Bar Association within five (5) days after the entry of such order or judgment.

Rule 7.10. Noncompliance with an order for support, as basis for discipline
The General Counsel of the Oklahoma Bar Association upon receiving the certified copy of such order or judgment shall commence his investigation and proceed subject to the Rules Governing Disciplinary Proceedings.

[Editor's Note: The Supreme Court added Rules 7.8, 7.9, and 7.10 on July 7, 1997 in response to OKLA. STAT. tit. 43 §139.1. Please read this statute which is reprinted at the end of these Rules Governing Disciplinary Procedures.]

RULE 8. RESIGNATION PENDING DISCIPLINARY PROCEEDINGS

8.1. Prerequisites for resignation

A lawyer who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may resign membership in the Oklahoma Bar Association, and thereby relinquish the right to practice law, only by delivering to the Commission an affidavit stating that the lawyer desires to resign and that:

(a) The resignation is freely and voluntarily rendered, the lawyer is not being subjected to coercion or duress, and the lawyer is fully aware of the consequences of submitting the resignation;

(b) The lawyer is aware that there is presently pending an investigation into, or proceedings involving, allegations that there exist grounds for discipline, specifying particularly the misconduct alleged;

(c) The lawyer agrees that he may be reinstated only upon full compliance with the conditions and procedures prescribed by these Rules, and no application for reinstatement may be filed prior to the lapse of five years from the effective date of the resignation.

8.2. Order approving; Reinstatement

Upon receipt of the required affidavit, the Commission shall file it with the Clerk of the Supreme Court and the Supreme Court shall enter an order approving the resignation pending disciplinary proceedings. A lawyer who so resigns shall only be permitted to apply for reinstatement after the lapse of five (5) years and under the provisions of Rule 11.

RULE 9. PROCEDURE FOLLOWING DISCIPLINARY ACTION BY COURT AND NOTICE THEREOF; WINDING UP OF BUSINESS OF DECEASED, DISCIPLINED OR MISSING LAWYER

9.1. Notice to clients; List of other bars to which admitted

When action of the Supreme Court becomes final, a lawyer who is disbarred or suspended, or who has resigned membership pending disciplinary proceedings, must notify all of the lawyer's clients having legal business then pending within twenty (20) days, by certified mail, of the lawyer's inability to represent them and the necessity for promptly retaining new counsel. If such lawyer is a member of, or associated with, a law firm or professional corporation, such notice shall be given to all clients of the firm or professional corporation, which have legal business then pending with respect to which the disbarred, suspended or resigned lawyer had substantial responsibility. The lawyer shall also file a formal withdrawal as counsel in all cases pending in any tribunal. The lawyer must file, within twenty (20) days, an affidavit with the Commission and with the Clerk of the Supreme Court stating that the lawyer has complied with the provisions of this Rule, together with a list of the clients so notified and a list of all other state and federal courts and administrative agencies before which the lawyer is admitted to practice. Proof of substantial compliance by the lawyer with this Rule 9.1 shall be a condition precedent to any petition for reinstatement.

9.2. Notice to other jurisdictions

The General Counsel shall thereafter cause notice of discipline to be given to all federal courts in Oklahoma; to the United States Court of Appeals for the Tenth Circuit; to the American Bar Association; to the National Conference of Bar Examiners and the National Discipline Data Bank; and to any other state
9.3. Appointment of attorneys to wind up lawyer's business

Whenever a lawyer disappears or dies while his professional conduct is under investigation by the Commission, or it appears that a disbarred or suspended lawyer is unable or unwilling to arrange for the winding up of his legal business, the Commission shall determine whether a partner, executor or other appropriate representative of the lawyer is available to notify and protect the interests of the lawyer's clients, and, if none is available, the Commission shall petition the Supreme Court to appoint one or more members of the bar to inventory the files of the lawyer and propose to the Court necessary or appropriate action to protect the interests of the clients of the lawyer and the lawyer himself, and to take such action in that regard as the Court shall direct. The attorney-client relationship shall be deemed to extend to all such attorneys so appointed. Said attorneys may take physical possession of the lawyer's files and may turn them over to the clients, subject to the Court's approval. A record shall be maintained of all facts in said files pertaining to the lawyer's right to fees. While carrying out the functions hereinabove described, the attorneys shall be considered as agents of the Court, and shall not be liable to any person for their actions taken in good faith.

10.1. Definition

The term "personally incapable of practicing law" shall include:

(a) Suffering from mental or physical illness of such character as to render the person afflicted incapable of managing himself, his affairs or the affairs of others with the integrity and competence requisite for the proper practice of law;

(b) Active misfeasance or repeated neglect of duty in respect to the affairs of a client, whether in matters pending before a tribunal or in other matters constituting the practice of law; or

(c) Habitual use of alcoholic beverages or liquids of any alcoholic content, hallucinogens, sedatives, drugs, or other mentally or physically disabling substances of any character whatsoever to any extent which impairs or tends to impair ability to conduct efficiently and properly the affairs undertaken for a client in the practice of law.

10.2. Suspension

Whenever it has been determined that a lawyer is personally incapable of practicing law, his license to practice shall be suspended until reinstated by order of this Court.

10.3. Procedure in general

(a) Proceedings to determine whether a lawyer is personally incapable of practicing law shall be instituted and conducted in the same manner and upon the same procedure as disciplinary proceedings, except as otherwise set out in these Rules.

(b) In addition to, and without exclusion of, any other circumstances, cause to believe that a lawyer may be personally incapable of practicing law, justifying referral to the General Counsel, shall exist whenever information is received that such lawyer (1) has interposed successfully a defense of mental incompetence to secure abatement of, or to defeat an adverse determination in, disciplinary proceedings brought against him in any tribunal in any jurisdiction, (2) has defended, upon like grounds, a suit brought against him in any tribunal in any jurisdiction, (3) has been judicially declared incompetent, or (4) has been legally committed, otherwise than voluntarily, to an institution for the treatment of mental illness.
10.4. Inquiry as to personal incapacity to practice law, incidental to disciplinary proceedings

Whenever in a disciplinary proceeding brought under these rules, the respondent interposes present mental incompetence as a ground for abating the proceeding, the Trial Panel of the Professional Responsibility Tribunal shall determine whether the respondent is mentally incapable to defend or to assist his counsel in defending against the charges. If it finds that the respondent is mentally incapable so to defend or to assist in defending, but that the condition is temporary, the Trial Panel may recommend that the disciplinary proceeding be continued until the condition is terminated, and that, until such termination, the lawyer be suspended from the practice of law on the ground of personal incapacity. When the cessation of such condition is made known to the Professional Responsibility Commission, it shall call it to the attention of the Professional Responsibility Tribunal with a request to proceed with the disciplinary proceeding. If the Trial Panel finds that the respondent's mental incapability is permanent or probably permanent, it shall proceed as if the respondent specifically had been alleged to be personally incapable of practicing law.

10.5. Joinder of disciplinary charges with charges of personal incapacity to practice law

Whenever a proceeding charging that a lawyer is personally incapable of practicing law is based upon conduct or neglect of duty in respect to the affairs of a client, the complaint must also allege specifically any such conduct which would justify the imposition of discipline, so that the Professional Responsibility Tribunal may hear evidence thereon, and in its report shall make findings and a recommendation as to whether the lawyer should be disciplined or whether he should be found personally incapable of practicing law.

10.6. Representation by counsel

In proceedings under this Rule, respondents shall be entitled to representation by counsel. A respondent who has been judicially declared mentally incompetent, or who has been judicially committed to an institution for the treatment of the mentally ill, shall be defended by his legally appointed guardian or guardian ad litem, if any; in default thereof, the Chief Justice, on certification by the Professional Responsibility Tribunal, shall appoint a guardian ad litem. The same procedure shall apply to a respondent who has asserted his incompetence or whose incompetence to defend becomes apparent during the proceedings. In all cases, counsel previously selected by the respondent will be appointed guardian ad litem, absent clear and compelling reasons.

10.7. Service of process or notice

Service of process on or notices to a respondent who has been committed or declared incompetent shall be accomplished as required by civil procedure or by rule of the Professional Responsibility Tribunal. After appointment of a guardian ad litem, notices will be served upon him.

10.8. Proof by certified copies

A certified copy of a court order declaring a respondent mentally incompetent, or an order of commitment, if he has been committed to an institution for the care of the mentally incompetent, shall constitute sufficient evidence that he is personally incapable of practicing law, if not successfully rebutted.

10.9. Examination by physicians

In any proceeding where mental incompetency is an issue, the respondent may be required to submit to a mental examination by one or more physicians selected by the Professional Responsibility Commission or by the trial Panel of the Professional Responsibility Tribunal after its appointment. Reports of physicians regarding the mental condition of a respondent may be received as probative evidence, if the physicians are available for cross-examination or if cross-examination is waived.

10.10. Proceedings in Supreme Court

The report of the Trial Panel of the Professional Responsibility Tribunal shall be made to the Chief Justice for proceedings in the Supreme Court as in disciplinary actions. If the Court finds the respondent personally incapable of practicing law, he shall be
formally suspended from the practice of law until the further order of the Court.

10.11. Application for reinstatement

(a) Procedures for reinstatement of a lawyer suspended because of personal incapacity to practice law shall be, insofar as applicable, the same as the procedures for reinstatement provided in Rule 11 following suspension upon disciplinary grounds. The petition shall be filed with the Clerk of the Supreme Court and the petitioner will be required to supply such supporting proof of personal capacity as may be necessary. In addition, the petitioner may be required to submit to examinations by physicians selected by the Professional Responsibility Tribunal. After the matter is submitted to the Professional Responsibility Tribunal, the Trial Panel may require such additional testimony and proof as may be helpful in determining whether the petitioner should be reinstated.

(b) After the hearing has been completed, the record and the report shall be forwarded to the Supreme Court for its consideration as a part of the record in the proceeding.

(c) The actual cost of the proceedings for suspension and for reinstatement shall be assessed against the respondent or petitioner unless remitted by the Supreme Court on the ground of hardship.

10.12. Confidentiality

Except where disciplinary proceedings are involved (Rule 10.5), all proceedings under this Rule 10 shall remain confidential and shall not be a matter of public record, unless otherwise ordered by the Supreme Court. A separate, non-public docket and files shall be maintained for this purpose, under the supervision of the Chief Justice.

RULE 11. REINSTATEMENT

11.1. Petition for reinstatement

A person whose name has been stricken from the Roll of Attorneys for non-payment of dues, or who has been suspended from the practice of law for a period of longer than two (2) years or disbarred, or who has resigned membership in the Association, may be readmitted to the practice of law only through the following procedure:

(a) The applicant shall file an original and ten copies of a petition for reinstatement with the Clerk of the Supreme Court, and attach thereto (1) an affidavit showing all of the applicant's activities since the termination or suspension of his right to practice law and the applicant's place or places of residence since that date; and (2) the applicant's affidavit and the affidavits of the court clerks in the several counties in which he has resided, establishing that the applicant has not practiced law in their respective courts since the termination or suspension of his right to practice law. The applicant shall concurrently furnish a copy of said petition and all other documents filed with the Clerk of the Supreme Court to the General Counsel of the Oklahoma Bar Association.

(b) If any funds of the Client's Security Fund of the Oklahoma Bar Association have been expended on behalf of the applicant, the applicant must show the amount paid and that the same has been repaid to the Oklahoma Bar Association to reimburse such Fund.

(c) The applicant shall pay a fee to cover the expenses of investigating and processing the application as determined by the Professional Responsibility Tribunal. In addition, the applicant shall pay the cost of the original and one copy of the transcript of any hearings in connection with the application.

(d) The applicant shall, if required by the Professional Responsibility Tribunal, procure at the applicant's expense and cause to be filed any report required by the Professional Responsibility Tribunal of the applicant's activities during any time after termination or suspension that the applicant has resided outside the state.

(e) The applicant shall not be permitted to file an application for reinstatement, after disbarment or resignation pending investigation or disciplinary proceedings, within five (5) years of the effective date of the order of the Court disbarring the applicant or accepting the resignation, nor shall any applicant be permitted to file an application for reinstatement within one (1) year after the Supreme Court has denied an earlier application.
11.2. Investigation by Professional Responsibility Commission

The Professional Responsibility Commission shall conduct an investigation on all applications for reinstatement.

11.3. Hearing before Professional Responsibility Tribunal

The application for reinstatement shall be referred to the Professional Responsibility Tribunal, which shall designate a three-member Trial Panel composed of two lawyers and one non-lawyer to hold a hearing on said application. One of the lawyer-members shall be designated as Presiding Master.

(a) The hearing shall be held not less than sixty (60) days nor more than (90) days after the petition has been filed.

(b) The trial panel shall cause notice of the hearing to be given to the applicant, the Professional Responsibility Commission and the General Counsel and to be published in the Oklahoma Bar Journal and in a newspaper of general circulation in the county of the residence of the applicant and, if it be different, also in the county of the applicant's residence at the time of the applicant's suspension, disbarment or resignation. The notice shall advise interested persons when and where the hearing will be conducted.

(c) At least ten (10) days before the hearing, the Applicant shall furnish to the General Counsel the names and addresses of all witnesses who will be called to testify before the Trial Panel as to his good moral character. Affidavits will not be considered.

(d) Discovery may be had, and the procedure, authority and powers of the Trial Panel shall be the same as provided in Rule 6.

(e) The hearing shall be conducted as an adversary proceeding and the General Counsel shall be responsible for cross-examination of the applicant's witnesses and presenting, where deemed advisable, testimony of witnesses in opposition to the applicant's reinstatement.

11.4. Standard of proof for petitions for reinstatement

An applicant for reinstatement must establish affirmatively that, if readmitted or if the suspension from practice is removed, the applicant's conduct will conform to the high standards required of a member of the Bar. The severity of the original offense and the circumstances surrounding it shall be considered in evaluating an application for reinstatement. The burden of proof, by clear and convincing evidence, in all such reinstatement proceedings shall be on the applicant. An applicant seeking such reinstatement will be required to present stronger proof of qualifications than one seeking admission for the first time. The proof presented must be sufficient to overcome the Supreme Court's former judgment adverse to the applicant. Feelings of sympathy toward the applicant must be disregarded. If applicable, restitution, or the lack thereof, by the applicant to an injured party will be taken into consideration by the Trial Panel on an application for reinstatement. Further, if applicable, the Trial Panel shall satisfy itself that the applicant complied with Rule 9.1 of these Rules.

11.5. Findings prerequisite to reinstatement

At the conclusion of the hearing held on the petition for reinstatement, the Trial Panel of the Professional Responsibility Tribunal shall file a report with the Supreme Court, together with the transcript of the hearing. Said report shall contain specific findings upon each of the following:

(a) Whether or not the applicant possesses the good moral character which would entitle him to be admitted to the Oklahoma Bar Association;

(b) Whether or not the applicant has engaged in any unauthorized practice of law during the period of suspension, disbarment or resignation;

(c) Whether or not the applicant possesses the competency and learning in the law required for admission to practice law in the State of Oklahoma, except that any applicant whose membership in the Association has been suspended or terminated for a period of five (5) years or longer, or who has been
disbarred, shall be required to take and successfully pass the regular examination given by the Board of Bar Examiners of the Oklahoma Bar Association. Provided, however, before the applicant shall be required to take and pass the bar examination, he shall have a reasonable opportunity to show by clear and convincing evidence that, notwithstanding his long absence from the practice of law, he has continued to study and thus has kept himself informed as to current developments in the law sufficient to maintain his competency. If the Trial Panel finds that such evidence is insufficient to establish the applicant's competency and learning in the law, it must require the applicant to take and pass the regular bar examination before a finding as to his qualifications shall be made in his favor.

11.6. Review by Supreme Court

After the filing of the Trial Panel's report, together with the petition for reinstatement, the transcript of the hearing and all exhibits offered thereat, with the Supreme Court, the Court may request that briefs be filed. Thereafter, the Court will take such action as it deems appropriate on the petition, based upon the record and the Trial Panel's report, or if it deems that the ends of justice require, the Court may remand the matter to the Professional Responsibility Tribunal for additional proceedings.

11.7. Notice of decision and petition for rehearing

Notice of the action taken by the Supreme Court on the petition shall be given to the applicant and the General Counsel. Either party may file with the Clerk of the Supreme Court a petition for rehearing within twenty (20) days after the Court issues its decision.

11.8. Reinstatement without order after suspensions of two (2) years or less

A lawyer who has been suspended for two (2) years or less upon disciplinary charges may resume practice upon the expiration of the period of suspension by filing with the Clerk of the Supreme Court an original and two (2) copies of an affidavit affirming that affiant has not engaged in the unauthorized practice of law or otherwise violated the rules of the Association or the terms of the affiant's order of suspension. The affidavit shall also describe all business or professional activities of the affiant and places of residence during the term of suspension. No order of Court is necessary; however, material deletions or misrepresentations in the affidavit shall be grounds for discipline.

A copy of the affidavit shall be served on the General Counsel by the lawyer at the time of its filing, who may within sixty days file a separate disciplinary complaint with the Professional Responsibility Commission stating the lawyer during the suspension engaged in the unauthorized practice of law or other actions which would render the lawyer subject to discipline.

RULE 12. WINDING UP BUSINESS OF LAWYER WHO IS DECEASED, INCAPACITATED OR MISSING NOT PENDING DISCIPLINARY PROCEEDINGS

12.1 Notice to General Counsel

Upon the death, incapacity (as defined in Rule 10.1) or apparent disappearance of a lawyer, any lawyer or law firm with which the lawyer was professionally associated, including office arrangements, or any lawyer consulted in connection with a deceased lawyer's estate or a lawyer's disappearance, shall give notice thereof to the General Counsel. Any other lawyer (including, but not limited to, lawyers involved in litigation or transaction activities with the deceased, incapacitated or disappeared lawyer) who becomes aware of a lawyer's death, incapacity or disappearance and who believes that such notice has not been given should do so. If a lawyer's personal incapacity to practice law is in dispute, Rule 6.2A shall be applicable in lieu of this Rule.

12.2 Action by General Counsel to ensure protection of clients upon the receipt of notice pursuant to rule

(a) Upon the receipt of notice pursuant to Rule 12.1, or in any other case where the General Counsel becomes aware of the death, incapacity or apparent disappearance of a lawyer, the General Counsel shall determine whether the lawyer's law firm or partner, or other appropriate representative of the lawyer, is
available to notify and protect the interests of the lawyer’s clients. The notification and protection responsibility to be discharged with respect to the clients of a deceased, incapacitated or disappeared lawyer is (1) to address matters requiring immediate attention, and (2) to notify all clients of the lawyer’s death, incapacity or apparent disappearance so that the clients may direct the disposition to be made of their files. If the deceased, incapacitated or disappeared lawyer is associated with a law firm, the members of such firms shall be responsible for undertaking and carrying out appropriate client notification and protection activities. If the lawyer’s practice is being sold pursuant to Rule 1.17 of the Rules of Professional Conduct, the provisions of such Rule shall be applicable.

(b) The General Counsel shall require the lawyer or lawyers performing, advising or otherwise involved in client notification and protection activities with respect to the clients of a deceased, incapacitated or disappeared lawyer to furnish such reports to the General Counsel as are reasonably necessary to assure that such client’s interests are in fact being protected.

12.3 Appointment of counsel to protect interests of clients of deceased, incapacitated or disappeared lawyer

(a) If it appears to the General Counsel that there is no law firm or partner, personal representative or other appropriate representative of a deceased, incapacitated or disappeared lawyer who will assume the responsibility, as described in the Rule 12.2(a), for protecting the interests of the clients of the deceased, incapacitated or disappeared lawyer, or if it subsequently appears that the measures being taken are not adequate to so protect the interests of the lawyer’s clients, the General Counsel shall file a petition with the chief judge of the district court of the county of such lawyer’s last known residence, requesting that one or more lawyers be appointed to inventory the files of the lawyer and propose to the court necessary or appropriate action as described in Rule 12.2(a), to protect the interests of the clients and the lawyer, and to take such action in that regard as the court shall direct.

(b) The attorney-client relationship shall be deemed to extend to all lawyers appointed pursuant to Rule 12.3. The lawyer or lawyers so appointed may take physical possession of the lawyer’s files, address any matters requiring immediate attention and turn such files over to the clients or the clients’ designees, subject to the court’s approval. A record shall be maintained of all facts in said files pertaining to the lawyer’s right to fees. While carrying out the foregoing functions, the attorneys so appointed shall be considered as agents of the court, and shall not be liable to any person for their actions taken in good faith. The lawyers so appointed may be compensated for their services, as determined by the court, from any fees owing to the lawyer, and if the amount of such lawyer’s fees is insufficient for that purpose, application may be made to the Supreme Court for payment from any available undesignated Bar Association funds.

(c) The General Counsel shall continue as a party to all proceedings commenced pursuant to Rule 12.3 until their conclusion and shall be served with all filings and reports.

12.4 Rules and forms to effectual rule

The General Counsel is authorized and directed to prepare proposed rules to be applicable and forms to be employed in the enforcement of Rule 12, and cause the same to be published in the Oklahoma Bar Journal for comment. Such rules and forms shall thereafter be submitted to the Supreme Court, and shall be effective upon their promulgation by the Court.

COMMENTS:

Introduction

Rules 9.1 and 9.3 of the Oklahoma Rules Governing Disciplinary Proceedings provide procedures to protect the interests of clients of lawyers who are disbarred or suspended, or die or disappear while their professional conduct is under investigation. However, no rule presently exists to provide comparable protection for clients of a lawyer not subject to disciplinary proceedings who dies, becomes incapacitated or disappears. Although Rule 1.17 of the Oklahoma Rules of Professional Conduct provides protection to the clients of a sole practitioner whose practice is being sold because the lawyer has ceased to practice in Oklahoma, its provisions only become applicable if
and when steps are taken to sell the lawyer’s practice. Therefore, no specific Rule presently applies except where a deceased, incapacitated or disappeared lawyer either is subject to disciplinary proceedings, or is a sole practitioner whose practice is proposed to be sold. Problems in this regard have arisen in the past, which the General Counsel’s office has been required to address with ad hoc, informal measures. This Rule is intended to fill this gap and provide guidance for lawyers, the Office of the General Counsel and the courts.

General

In the discharge of a lawyer’s general ethical obligations to the lawyer’s clients, a lawyer should have in place a plan providing for the protection of the interests of the lawyer’s clients in the event of the lawyer’s death or incapacity. This should include, at a minimum, the designation of another lawyer or law firm which would have the authority to review client files and make determinations as to which files need immediate attention, and who would notify clients of their lawyer’s death or incapacity, so that such files can be turned over to the clients or their designees. See ABA Formal Ethics Opinion 92-369 (December 7, 1992). Where a lawyer is associated with a law firm, it is the duty of the members of the law firm to ensure that appropriate action is taken, in the absence of such a designation. However, in the event this is not done, or the lawyer or law firm so designated is unable or unwilling to accept, or does not in fact assume, this responsibility, the Bar Association, through the Office of the General Counsel, should assume the responsibility of protecting the interests of the clients of the deceased or incapacitated lawyer. This would also be the case in the infrequent instances when a lawyer disappears. The effectuation of such client protection measures is provided for in this Rule. The reviewing attorney should perform the review of client files contemplated by this rule with due regard for potential conflicts of interests, and must take appropriate action (e.g., assigning the file to another lawyer) in cases where a conflict might exist.

Notification of Office of the General Counsel

The basis principle underlying the Rule is that the Office of the General Counsel is to be notified whenever any lawyer dies, becomes incapacitated or apparently disappears, and thereafter the General Counsel is to exercise oversight appropriate in the circumstances over the disposition of the matters being handled by the lawyer to insure that the interests of the lawyer’s clients are protected. Pursuant to this principle, Rule 12.1 imposes an obligation upon certain lawyers who may reasonably be assumed to have knowledge of a lawyer’s death, incapacity or disappearance to provide such notice, and strongly suggests that other lawyers in a position to have such knowledge confirm that this has been done.

Overview by General Counsel of Client Protection Actions

Rule 12.2 provides for the General Counsel to determine whether appropriate steps are being taken to protect client interest, including obtaining such reports from the lawyer or lawyers who have assumed that responsibility as may reasonably be required. It is contemplated that minimal supervision by, and reporting to, the General Counsel’s office will be necessary or appropriate where a partner or law firm is available to protect client interests, or where the practice is being sold pursuant to Rule 1.17 of the Rules of Professional Conduct.

Court Proceedings To Enforce Rule

In circumstances when it appears to the General Counsel either that no measures are being taken to ensure that the clients’ interests are protected or that the measures being taken are inadequate for that purpose, Paragraphs 12.3 authorizes the General Counsel to commence a proceeding in the district court to appoint a lawyer or lawyers to carry out measures.

Rules and Forms

Since the discharge of the client protection functions of the General Counsel under the Rule could be facilitated by establishing standard procedures and forms, the General Counsel is directed to prepare proposed rules and forms for that purpose, to be effective upon their promulgation by the Supreme Court.
RULE 13. SERVICE

13.1. Manner of service

Service of any and all correspondence, notices, and any formal complaint, in connection with proceedings under these Rules, whether before or after the filing of a formal complaint, may be made upon the respondent lawyer or applicant for reinstatement in person or by mail directed to the respondent or applicant at the last address shown on the official roster of the Oklahoma Bar Association, unless and until the respondent or applicant, or counsel for the respondent or applicant, shall cause to be delivered to the General Counsel a notice reflecting a different address. Proof of mailing to the respondent or applicant at such address shall be sufficient to prove service. Except as otherwise specifically provided in these Rules, service may be made by regular mail.

RULE 14. ANNUAL REPORTS

14.1. Annual Report

No later than the first Friday in February of each year, the Professional Responsibility Commission and the Professional Responsibility Tribunal shall file a written report with the Clerk of the Supreme Court reporting the activities of those bodies for the preceding year. Said report shall immediately be published in the Oklahoma Bar Journal. These reports shall contain statistical information showing, but not limited to, the following:

(a) The total number of grievances or complaints received and processed by each body during the preceding year.

(b) The nature and disposition of said complaints.

(c) The number of complaints pending at the close of the year.

RULE 15. IMMUNITY FOR OFFICIAL ACTS

15.1. Immunity

The members of the Professional Responsibility Commission, the Board of Governors of the Association, the Professional Responsibility Tribunal, the Officers of the Association, the General Counsel of the Association, the staff employed by the Association and the General Counsel of the Association, in acting in connection with the enforcement of these Rules, 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 considered as acting officially on behalf of the Supreme Court of the State of Oklahoma, and shall enjoy immunity from civil liability to the fullest extent recognized by federal and state law.

OKLAHOMA STATUTES ANNOTATED

OKLA. STAT. Tit. 43 §139.1 Definitions -- Revocation or suspension of various licenses as remedy for noncompliance with support order.

A ...
B.1 Except as otherwise provided by this subsection, the district courts of this state are hereby authorized to order the revocation or suspension of a license or the placement of the obligor on probation who is in noncompliance with an order for support.

2. If the obligor is a licensed attorney, the court may report the matter to the Oklahoma Bar Association for appropriate action in accordance with the rules of professional conduct.

OKLA. STAT. Tit. 68 § 238.1. State license--Income tax laws--Notification--Definitions

A. Upon receipt of an application for the issuance, renewal, reinstatement or transfer of a state license, the licensing entity shall notify the Oklahoma Tax Commission that the application has been received and shall supply such information as may be requested by the Tax Commission for purposes of implementing the provisions of this section. The provisions of any laws making application information confidential shall not apply with respect to information supplied to the Tax Commission pursuant to the provisions of this section; provided, such information shall be subject to the provisions of Section 205 of Title 68 of the Oklahoma Statutes.

B. A state license shall not be issued, renewed, reinstated or transferred until the Tax Commission has
verified that the individual applying for the license is in compliance with state income tax laws and has so notified the licensing entity. The Tax Commission shall make every effort to verify such information and notify the licensing entity in a timely manner. If the only reason for delaying action on a license application is the lack of notification pursuant to the provisions of this section, the licensing entity shall proceed to act on the license application within thirty (30) days of receipt of notification by the Tax Commission.

C. If the Tax Commission finds that the individual applying for the license is not in compliance with state income tax laws, it shall so notify the licensing entity, which shall deny the application and notify the applicant of the reason for denial. A licensing entity shall not be held liable for any action with respect to a state license pursuant to the provisions of this section.

D. The State Regents for Higher Education are hereby directed to provide information received from state licensing entities pursuant to the provisions of Section 623 of Title 70 of the Oklahoma Statutes, including Social Security numbers, to the Tax Commission for use in the implementation of the provisions of this section. The Tax Commission shall promulgate rules for the implementation of the provisions of this section.

E. As used in this section:
1. "State license" means a license, certificate, registration, permit, approval or other similar document issued by a licensing entity granting to an individual or business a right or privilege to engage in a profession, occupation or business in this state; and
2. "Licensing entity" means a bureau, department, division, board, agency, commission or other entity of this state or of a municipality in this state that issues a state license.

The Oklahoma Supreme Court did not adopt the Preamble, Terminology, or Comments of the ABA Model Code as part of the official Oklahoma version of the OCJC. Judges and lawyers wanting to understand the OCJC, however, can learn much from these even though not officially adopted.

Please be aware of the fonts used. If the text is in italics, the text is ABA Model Code text that the Oklahoma Supreme Court did not adopt. If the text is in bold, the text is unique to Oklahoma. If the text is in font like this sentence, the OCJC and the ABA Model Code are identical as to that text.

The ABA Model Judicial Code is the version current through July 2006.

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.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is 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 by 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 not to 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 and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system. See ABA Standards Relating to Judicial Discipline and Disability Retirement.

The Code of Judicial Conduct 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

"Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

"Candidate." A candidate is a person seeking selection for or retention in judicial office by election or appointment. 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 election or appointment authority, 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.

"Continuing part-time judge." A continuing part-time judge is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law. See Application Section C.

"Court personnel" does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

"De minimis" denotes 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" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that: (I) 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; (ii) 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; (iii) a deposit in a financial institution, the proprietary interest of a policy holder 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; (iv) 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 executor, administrator, trustee, and guardian. See Sections 3E(2) and 4E.

"Impartiality" or "impartial" denotes absence of bias or prejudice in favor or, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge. See Section 2A, 3B(10), 3E(1), 5A(3)(a) and 5A(3)(d)(i).

"Knowingly," "knowledge," "known" or "knows" denotes 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" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(6), 4B, 4C, 4D(5), 4F, 4I, 5A(2), 5A(3), 5B(2), 5C(1), 5C(3) and 5D.

"Member of the candidate's family" denotes 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" denotes 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" denotes 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" denotes 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, presentencing reports, dependency cases or psychiatric reports. See Section 3B(11).

"Periodic part-time judge." A periodic part-time judge is a judge who serves or expects to serve repeatedly on a part-time basis but under a separate appointment for each limited period of service or for each matter. See Application Section D.

"Political organization" denotes 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).

"Pro tempore part-time judge." A pro tempore part-time judge is a judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. See Application Section E.

"Public election." This term includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections. See Section 5C.

"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).

"Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(d).
CANON 1: A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

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 should personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to 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. A judiciary of integrity is one in which judges are known for their probity, fairness, honesty, uprightnss, and soundness of character. An independent judiciary is one free of inappropriate outside influences. 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 adherance 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 should 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. Examples are the restrictions on judicial speech imposed by Section 3(B)(9) and (10) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.

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 of 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, impartiality and competence is impaired.

See also Commentary under Section 2C.

B. A judge should not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge should not lend the prestige of judicial office to advance the private interests of the judge or others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should 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 to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.

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.

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 testifies. 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 summoned. 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 Ass'n. Inc. v. City of New York, 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 (1987), 95 L.Ed.2d 474; 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 to regularly 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 a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

**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.

(1) (2) A judge should be faithful to the law, and maintain professional competence in it. A judge should not be swayed by partisan interests, public clamor or fear of criticism.

(2) (3) A judge should require order and decorum in proceedings before the judge.

(3) (4) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should 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.

(4) (5) A judge should perform judicial duties without bias or prejudice. A judge should 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 should 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 could reasonably 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 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.

(5) (6) A judge should require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(5)(6) 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.

(6) (7) A judge should 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 should not initiate, permit, or nor 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; provided: (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, with a record being made, 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.

(d) (e) A judge may initiate or consider any ex parte communications when expressly 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 file 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 communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(7) (8) A judge should 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, 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.

(8) (9) A judge should not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge should 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.

(9)(10) A judge should not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

COMMENT:

Sections 3B(9) and (10) restrictions on judicial speech are essential to the maintenance of the integrity, impartiality, and independence of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. Sections 3B(9) and (10) do 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 ABA Model Rules of Professional Conduct]. (Each jurisdiction should substitute an appropriate reference to its rule.)

(10) Except as permitted by the individual judge, the use of cameras, television or other recording or broadcasting equipment is prohibited in a courtroom or in the immediate vicinity of a courtroom.

(a) Before cameras, television or other recordings or broadcasting equipment are used, express permission of the judge must be obtained.

(b) The judge shall prescribe the conditions and specific rules under which such equipment may be used.

(c) Media personnel shall not distract participants or impair the dignity of the proceedings.

(d) No witness, juror or party who expresses any objection to the judge shall be photographed nor shall the testimony of such a witness, juror or party be broadcast or telecast.

(e) There shall be no photographing or broadcasting of:

(1) any proceeding which under the laws of this State are required to be held in private; or

(2) any portion of any criminal proceedings until the issues have been submitted to the jury for determination unless all accused persons who are then on trial shall have affirmatively, on the record, given their consent to the photographing or broadcasting.

(f) No media representative shall offer, nor shall any party, witness or juror accept, consideration in exchange for consent to telecast, broadcast or photograph the judicial proceedings.

(8) [(g) sic] Representatives of the news media shall conduct themselves at all times in a
professional manner consistent with the spirit and intent of this rule. In order to insure such conduct, if such conduct of the news media which violates any of these rules is brought to the attention of any judge, the offending person shall be notified to immediately cease and desist such activity. If the offending party refuses to comply with the order, the judge may act to end such activity, including the seizure of the equipment of such person. Any offender may be dealt with for contempt of court.

(11) A judge should 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. Managerial Administrative Responsibilities.

(1) A judge should diligently discharge the judge's managerial 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 should 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 should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge should not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid nepotism and favoritism. A judge should 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 and guardians 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 3C(4).

(5) A judge shall not appoint a lawyer to a position if the judge either knows that the lawyer has contributed more than $ within the prior years to the judge’s election campaign, or learns of such a contribution by means of a timely motion by a party or other person properly interested in the matter, unless

(a) the position is substantially uncompensated;
(b) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or
(c) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent and able to accept the position.

D. Disciplinary Responsibilities.

A judge should report to the appropriate disciplinary authority any unprofessional conduct of a judge or lawyer of which the judge may become aware.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a 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 Rules of Professional Conduct [substitute correct title if the applicable rules of lawyer conduct have a different title] should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct [substitute correct title if the applicable rules of lawyer conduct have a different title] 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.

(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, and no civil action predicated thereon may be instituted against the judge.

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 disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

COMMENT:

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably 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.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

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 does not ordinarily 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 disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows that he or she, 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 an interest more than de minimis any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third 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 an interest more than de minimis a more than de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(e) the judge knows or learns by means of a timely motion that a party or a party's lawyer has within the previous [] year[s] made aggregate contributions to the judge’s campaign in an amount that is greater than {{[$ ] for an individual or [$ ] for an entity.} is reasonable and appropriate for an individual or an entity.}

(e) The Judge, while a judge or candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to an issue in the proceeding or the controversy in the proceeding.

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 might reasonably 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 "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

(f) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to (i) an issue in the proceeding; or (ii) the controversy in the proceeding.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and 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.

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 shall be incorporated in the record 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 may wish to have all parties and their lawyers sign the remittal agreement.

CANON 4: A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extra-judicial Activities in General.

A judge should conduct all of the judge's extra-judicial 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 extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

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 Commentary.

B. Avocational Activities.

A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal 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 may 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 should 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 unless with specific approval of the Supreme Court. 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 extra-judicial 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 non-governmental 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 the board of 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 non-legal 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:

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 Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other 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 should not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) 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 non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising 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) should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(I), if the membership solicitation is essentially a fund-raising mechanism;

(iv) should not use or permit the use of the prestige of judicial office for fund-raising 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 cannot reasonably be perceived as coercive and is not essentially a fund-raising 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 fund-raising 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, and, if comparable designations are listed for other persons, the judge's judicial designation. 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 fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

D. Financial Activities.

(1) A judge should shall not engage in financial and business dealings that

(a) may reasonably 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 of this Code (Application, Section F) 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 on 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 judge with law firms appearing before the judge, see Commentary 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 and 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 Commentary 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 **should** **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 investment 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 **should** **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 divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge **should** **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:**

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 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 could not reasonably 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(5)(c).

(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, but 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 the judge reports it as may be required by law. if its value exceeds $150.00, the judge reports it in the same manner as the judge reports compensation in Section 4H.

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 should not serve as executor, administrator or other personal representative, 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 should 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 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. A retired judge who is eligible for recall may act as an arbitrator or mediator except while serving as judge. A retired judge who acts as an arbitrator or mediator in a matter may not thereafter act as a judge in the same matter. A retired judge who acts as an arbitrator or mediator may receive some reasonable compensation to be paid by the parties.
A retired judge, as the term is used, is one who had been approved by the Supreme Court for active service 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. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family. A judge may appear pro se in a matter in which he is a litigant.

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 appearances 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).

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

Canon 6, new in the 1972 Code, reflected concerns about conflicts of interest and appearances of impropriety arising from compensation for off-the-bench activities. Since 1972, however, reporting requirements that are much more comprehensive with respect to what must be reported and with whom reports must be filed have been adopted by many jurisdictions. The Committee believes that although reports of compensation for extra-judicial activities should be required, reporting requirements preferably should be developed to suit the respective jurisdictions, not simply adopted as set forth in a national model code of judicial conduct. Because of the Committee's concern that deletion of this Canon might lead to the misconception that reporting compensation for extra-judicial activities is no longer important, the substance of Canon 6 is carried forward as Section 4H in this Code for adoption in those jurisdictions that do not have other reporting requirements. In jurisdictions that have separately established reporting requirements, Section 4H(2) (Public Reporting) may be deleted and the caption for Section 4H modified appropriately.

H. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) 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.

(b) Expense reimbursement 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.

(2) Public Reports. A judge shall report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.

COMMENT:

See Section 4D(5) regarding reporting of gifts, bequests and loans.
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 appear to trade on 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. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.

COMMENT:

Section 3E requires a judge to disqualify himself or herself 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 4H 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 5: A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

[Editor's Note: The Supreme Court decision in Republican Party of Minnesota v. White, 536 U.S. 765 (2002) calls into question Canon 5"s attempt to restrict judicial freedom of speech when running for judicial office through the contested election process.]

A. All Judges and Candidates

(1) Except as authorized herein in Sections 5B(2), 5C(1) and 5C(3), a judge or a candidate for election or appointment to judicial office should not:

(a) act as a leader or hold an office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or candidate or publicly endorse a candidate for public office; or

(d) attend political gatherings; or

(d) 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.

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 elective 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.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

(2) A judge should resign from judicial office upon becoming a candidate for a non-judicial 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) **should shall** maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and **should shall** encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as **they** 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) **should shall** prohibit employees and officials who serve at the pleasure of the candidate, and **should 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), **should 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) **should shall** not:

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with impartial performance of the adjudicative duties of the office;

(ii) 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 his or her personal views. See also Section 3B(9) and (10), 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 made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the ABA Model Rules of Professional Conduct.

(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 **should 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 **should shall** not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and
(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

(b) a non-judge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law:

(i) retain an office 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 reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge 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 Section.

C. Judges and Candidates Subject to Public Election.

(1) A judge or a candidate subject to public election may, except as prohibited by law:

(a) at any time

(i) purchase tickets for and attend political gatherings;

(ii) identify himself or herself as a member of a political party; and

(iii) contribute to a political organization;

(b) when a candidate for election

(a) (i) speak to gatherings on his or her own behalf;

(b) (ii) appear in newspaper, television and other media advertisements supporting his or her candidacy;

(c) (iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and

(d) (iv) publicly endorse or publicly oppose other candidates for the same judicial office in a public election in which the judge or judicial candidate is running.

COMMENT:

Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

(2) A candidate should shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate 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 and/or accept contributions and public support for the candidate's campaign no earlier than 90 days [one year] before an election filing period and no later than 30 /90/ days after the last election in which the candidate participates during the election year. A candidate should shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

COMMENT:
There is legitimate concern about a judge’s impartiality when parties whose interests may come before a judge, or the lawyers who represent such parties, are known to have made contributions to the election campaigns or judicial candidates. This is among the reasons that merit selection of judges is a preferable manner in which to select the judiciary. Notwithstanding that preference, Section 5C(2) recognizes that in many jurisdictions judicial candidates must raise funds to support their candidates for election to judicial office. It therefore permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. In order to guard against the possibility that conflicts of interest will arise, the candidate must instruct his or her campaign committees at the start of the campaign to solicit or accept only contributions that are reasonable and appropriate 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, by virtue of their size or source, raise questions about a judge’s impartiality and be cause for disqualification as provided under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible. Such committees must at all times comply with applicable statutory provisions governing their conduct.

Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

(3) A candidate shall instruct his or her campaign committee(s) at the start of the campaign not to accept campaign contributions for any election that exceed, in the aggregate, $ \[ \] from and individual or $ \[ \] from an entity. This limitation is in addition to the limitation provided in Section 5C(2).

(4) In addition to complying with all applicable statutory requirements for disclosure of campaign contributions, campaign committees established by a candidate shall file with \[ \] a report stating the name, address, occupation and employer of each person who has made campaign contributions to the committee whose value in the aggregate exceed \[ \]. The report must be filed within \[ \] days following the election.

(5) Except as prohibited by law, a candidate for judicial office in a public election, may permit the candidate’s name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

COMMENT:

Section 5C(3) provides a limited exception to the restrictions imposed by Section 5A(1).

D. Incumbent Judges on Retention Ballot.

A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law.

An incumbent judge or justice who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided herein.

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 Commentary to Section 4B and Section 4C(1) and its Commentary.

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 his or her campaign conduct; an
unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to [Rule 8.2(b) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its applicable rule.)

F. On October 5, 1998, and in all judicial elections thereafter, within ten (10) days after formally announcing and/or qualifying for election or re-election to any judicial office in this state (whichever is earlier), all candidates, including incumbent judges, shall forward written notice of such candidacy, together with an appropriate mailing address, to the Administrative Director of the Courts. Upon receipt of such notice, the Administrative Director shall cause to be distributed to all such candidates by Registered Mail, Return Receipt Requested, copies of the following: Canon 5 of the Code of Judicial Conduct; summaries of all previous Formal Advisory Opinions, if any, issued by the Judicial Ethics Panel which relate in any way to campaign conduct and practices; and a form acknowledgment which each candidate shall promptly return to the Administrative Director of the Courts and therein certify that he/she has read and understands the material forwarded and agrees to be bound by such standards during the course of the campaign. A FAILURE TO COMPLY WITH THIS SECTION SHALL CONSTITUTE A PER SE VIOLATION OF CANON 5. Upon request, the documents executed by a candidate for judicial election in accordance with this rule shall be made available to General Counsel of the Oklahoma Bar Association, the Panel on Judicial Elections, the Council on Judicial Complaints, and the Oklahoma Supreme Court.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as an administrative law judge, a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

COMMENT:

The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this Section, as long as a retired judge is subject to recall the judge is considered to "perform judicial functions." The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

B. Retired Judge Subject to Recall.

A retired judge subject to recall who by law is not permitted to practice law is not required to comply:

(1) except while serving as a judge, with Section 4F; and

(2) at any time with Section 4E.

C. Continuing Part-time Judge.

A continuing part-time judge:

(1) is not required to comply

(a) except while serving as a judge, with Section 3B(9); and

(b) at any time with Sections 2(C), 4C(2), 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2) and 5D.

(2) should shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

COMMENT:

When a person who has been a continuing part-time judge is no longer a continuing part-time judge, including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to [Rule 1.12(a) of the
ABA Model Rules of Professional Conduct. (An adopting jurisdiction should substitute a reference to its applicable rule).

D. Periodic Part-time Judge.

A periodic part-time judge is a municipal judge who serves on a continuing or periodic 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.

(1) A periodic part-time judge: (l) is not required to comply

(a) except while serving as a judge, with Section 3B(9);

(b) at any time, with Sections 2C, 4C(2), 4C(3)(a), 4C(3)(b), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5A(2), 5B(2) and 5D.

(2) A periodic part-time judge should not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and should not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

COMMENT:

When a person who has been a periodic part-time judge is no longer a periodic part-time judge (no longer accepts appointments), that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to [Rule 1.12(a) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its applicable rule).

E. Pro Tempore Part-time Judge.

A pro tempore part-time judge is a person who is appointed to act temporarily as a judge.

A pro tempore part-time judge

(1) is not required to comply

(a) except while serving as a judge, with Sections 2A, 2B, 3B(9) and 4C(1);

(b) at any time with Sections 2C, 4C(2), 4C(3)(a), 4C(3)(b), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5A(2), 5B(2) and 5D.

(2) A person who has been a pro tempore part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by [Rule 1.12(a) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its applicable rule.)

Oklahoma Rules of Professional Conduct.

F. Time and for Compliance.

A person to whom this Code becomes applicable should comply immediately with all provisions of this Code except Sections 4D(2), 4D(3) and 4E and should comply with these Sections as soon as reasonably possible and should do so in any event within the period of one year.

COMMENT:

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

G. Creation of Judicial Ethics Advisory Panel

(a) Pursuant to the Administrative Authority vested in this Court by Art. 7, Sec. 6, Okl. Const., and the rule making authority of this Court as provided by 20 O.S.1991 Sec. 24, there is hereby created a judicial ethics advisory panel to serve as an advisory committee for judges seeking opinions concerning the compliance of an intended future course of conduct with the Code of Judicial Conduct. The panel shall consist of no more than
three retired justices and/or judges who shall be appointed by the Chief Justice to staggered terms on the panel. One member shall be appointed for a term of two (2) years, commencing January 1, 1998; second member shall be appointed for a term of three (3) years, commencing January 1, 1998; and the third member shall be appointed for a term of four (4) years, commencing January 1, 1998. Nothing in this Rule will prevent a member of the panel from serving successive terms if approved by the Supreme Court. In the event a vacancy on the panel occurs for any reason, the person appointed as successor member will be appointed to fill the unexpired term of the former member. Members of the advisory panel shall be reimbursed in accordance with 20 O.S.Supp.1997, Sec. 1104B(F). The Administrative Director of the Court is directed to provide the panel with office space and secretarial assistance sufficient to meet the needs and requirements of the panel.

(b) A request for a judicial ethics advisory opinion shall be directed to the Clerk of the Appellate Courts who shall forward the request to the panel if the requirements of this rule are satisfied. Requests will be accepted only from presently elected or appointed Justices or judges, active retired judges or retired judges, or any bona fide candidate for judicial office. The term "Judge" as used herein shall include Justices, Judges, retired or active retired Judges, and bona fide candidates for judicial office. The Judicial Ethics Advisory Panel, on its own initiative, may also issue advisory opinions and may modify previously issued advisory opinions that are affected by changed in the law.

(c) Requests for Judicial Ethics Advisory Opinions shall relate to prospective conduct only and shall contain a complete statement of all facts pertaining to the intended conduct together with a clear, concise question of judicial ethics. The identity of the Judge or judicial candidate, whose proposed conduct is the subject of the request, shall be disclosed to the panel. The requesting Judge or judicial candidate shall include with the request a memorandum setting forth any research or opinions the Judge may have concerning the question and the particular canon in question. Requests shall not be accepted or referred for opinion unless accompanied by this memorandum.

(d) Advisory opinions shall address only whether an intended, future course of conduct violates the Code of Judicial Conduct and shall provide an interpretation of the Code with regard to the factual situation presented. The opinion shall not address issues of law nor shall it address the ethical propriety of past or present conduct. The identity of the requesting judge or judicial candidate shall not be disclosed in the opinion.

(e) The Clerk shall provide a copy of each advisory opinion to the Chief Justice, the Council on Judicial Complaints, and the requesting judge or candidate for judicial office, and the state law library. The Clerk shall keep the original opinion in a permanent file.

(f) The fact that a judge or candidate for judicial office has requested and relies upon an advisory opinion may be taken into account by the Council on Judicial Complaints in its disposition of complaints and in determining whether to recommend to the statutorily authorized person or entity discipline of a judge or judicial candidate. The advisory opinion shall not be binding on the Council on Judicial Complaints or Court on the Judiciary in the exercise of their judicial discipline responsibilities. Amended by orders of Jan. 5, 1998, eff. Feb. 1, 1998; March 16, 1998.
BAR ASSOCIATION REPORTS
PROFESSIONAL RESPONSIBILITY COMMISSION
AND
PROFESSIONAL RESPONSIBILITY TRIBUNAL
January 1, 1990 through December 31, 1990
62 OBJ 1140-1144 (1991)
and
January 1, 1998 through December 31, 1998
70 OBJ 736-739 (1999)

FORMAL DISCIPLINE IMPOSED IN 1990
   Disbarred = 0
   Resigned Pending Disciplinary Action = 8
   Suspended = 5
   Public Censure = 5
   Private Reprimand = 3
   Interim Suspension = 0

FORMAL DISCIPLINE IMPOSED IN 1998
   Disbarred = 4
   Resigned Pending Disciplinary Action = 7
   Suspended = 7
   Public Censure = 2
   Private Reprimand = 5
   Rule 10 Suspension = 1 (indefinite)

REINSTATEMENTS IN 1990
   Granted = 10
   Denied = 0

REINSTATEMENTS IN 1998
   Granted = 4
   Denied = 2

PROFESSIONAL RESPONSIBILITY COMMISSION ACTIONS IN 1990
   Formal Charges Filed = 24
   Private Reprimands = 20
   Letters of Admonition = 38
   Grievances Received = 1240 (involving 810 attorneys)

PROFESSIONAL RESPONSIBILITY COMMISSION ACTIONS IN 1998
   Formal Charges Filed = 14
   Private Reprimands = 18
   Letters of Admonition = 42
   Grievances Received = 1594 (involving 1049 attorneys)
STATISTICS for 1990
Percentage of Attorneys Against Whom Grievances Filed = 8.3%
Percentage of Formal Grievances Against Urban Attorneys = 54.0%
Percentage of Formal Grievances Against Rural Attorneys = 46.0%

STATISTICS for 1998
Percentage of Attorneys Against Whom Grievances Filed = 9.3%
Percentage of Formal Grievances Against Urban Attorneys = 52.7%
Percentage of Formal Grievances Against Rural Attorneys = 47.3%

COMPLAINTS BY NATURE OF GRIEVANCE

<table>
<thead>
<tr>
<th>Nature of Grievance</th>
<th>1990 Percentage</th>
<th>1998 Percentage</th>
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<tbody>
<tr>
<td>Neglect</td>
<td>46.5%</td>
<td>34.0%</td>
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<tr>
<td>Misappropriation/Fraud</td>
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<td>Trust Violations</td>
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Annual Report - More Than Just Statistics, Dan Murdock General Counsel Oklahoma Bar Association

Each year after the filing of the Annual Report of the Professional Responsibility Tribunal and the Professional Responsibility Commission required by Rule 13.1 of the Rules Governing Disciplinary Proceedings, 5. O.S. ch. 1, app. 1-A (1995), the office of the General Counsel reviews that report and attempts to uncover the true meaning of the statistical analysis provided. It is relatively easy to compile the numbers and report those as required. It is also relatively easy to list the discipline imposed on those whose conduct was determined to warrant such discipline. It is also easy to show the type of grievance received, the area of law in which it was received and the number of years of practice by the recipient of the grievance. This is where the easy part ends and the search for the true meaning begins.

If you review the annual reports of the past few years, you will find that they change little. In 1995 as in years past, neglect is the most frequent cause of a grievance and the number of grievances received remain relatively constant, although the past year showed a disappointing increase. Family law and criminal law continue to remain as the leading areas of the law in which grievances are received. I recognize that these areas comprise a very large portion of the practice and, because of the emotions and individuals involved, provide a fertile ground for the generation of a grievance. However, despite a greater emphasis on law office management, more encouragement for better communication with the client and the sharp realization that each individual lawyer must begin in singular fashion to improve the image of the legal profession, neglect is still the leading cause of a grievance and the number of grievances received is not declining.

This trend, although disheartening, is not cause for surrender. There are many things that can be done to reverse the process and insure better representation for the client. Some of these were listed in a Lawyers’ Pledge of Professionalism I read recently. Some of the 12 listed items concerned the practice of law as a profession with its unique code of ethics that distinguishes it from a business. Others were concerned with certain obligations to the court, the legal system and the public. Naturally, others were concerned with the obligation to the client. It is these obligations we must remember when accepting the representation of a client. It is that remembrance which will make those future annual reports unlike those of the present.

The numbers cited in the annual report are not just numbers. Those numbers represent people. People, who as clients, have sought help from those licensed by the Supreme Court as qualified to provide that help. They deserve those thoughts expressed in the Lawyers Creed adopted by the OBA Board of Governors on November 17, 1989. They deserve a lawyer who adheres to that creed.

If the annual report, with its statistics and graphical analysis, can provide us guidance for a better way to practice law, it is well worth its compilation. If it causes a greater resolve to better represent clients, then its writing is a welcome success. Perhaps that is its true meaning.
owes to the public, to the court, to his professional brethren, and to his client. Most states have adopted the Rules of Professional Conduct of the American Bar Association. See also Canon.

**THE OKLAHOMA BAR JOURNAL, Vol. 67 - No. 11, (March 1996)**

**OKLAHOMA'S BAR ASSOCIATION LAWYER'S CREED, adopted by the Board of Governors November 17, 1989**

I revere the Law, the System, and the Profession, and I pledge that in my private and professional life, and in my dealings with members of the Bar, I will uphold the dignity and respect of each in my behavior toward others.

In all dealings with members of the Bar, I will be guided by a fundamental sense of integrity and fair play.

I will not abuse the System or the Profession by pursuing or opposing discovery through arbitrariness or for the purpose of harassment or undue delay.

I will not seek accommodation for the rescheduling of any Court setting or discovery unless a legitimate need exists. I will not misrepresent conflicts, nor will I ask for accommodation for the purpose of tactical advantage or undue delay.

In my dealings with the Court and with counsel, as well as others, my word is my bond.

I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

I recognize that my conduct is not governed solely by the Rule of Professional Conduct, but also by standards of fundamental decency and courtesy. Accordingly, I will endeavor to conduct myself in a manner consistent with the Oklahoma Bar Association Guidelines for Professional Courtesy.

I will strive to be punctual in communications with others and in honoring scheduled appearances, and I recognize that neglect and tardiness are demeaning to me and to the Profession.

If a member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, I will not arbitrarily or unreasonable withhold consent.

I recognize that a desire to prevail must be tempered with civility. Rude behavior hinders effective advocacy, and, as a member of the Bar, I pledge to adhere to a high standard of conduct which clients, attorneys, the judiciary and the public will admire and respect.

**STANDARDS OF PROFESSIONALISM**

Approved by the Oklahoma Bar Association, Board of Governors, April 20, 2006

**Standards of Professionalism**

Approved by the Oklahoma Bar Association Board of Governors April 20, 2006.

**Definition**

Professionalism for lawyers and judges requires honesty, integrity, competence, civility and public service.

*******************************************************************************

**STANDARDS OF PROFESSIONALISM**

Approved by the Oklahoma Bar Association Board of Governors November 20, 2002 and the Oklahoma Judicial Conference on December 20, 2002.

**PREAMBLE**

We judges and lawyers of the State of Oklahoma recognize our responsibility to uphold the longstanding traditions of professionalism and civility within the legal system. The very nature of our adversary system of justice requires respect for the law,
the public, the courts, administrative agencies, our clients and each other. While the Rules of Professional Conduct establish the minimum standards a lawyer must meet to avoid discipline, the following Standards of Professionalism represent the level of behavior we expect from each other and the public expects from us in our dealings with the public, the courts, our clients and each other. The Standards of Professionalism are not intended to be used as a basis for discipline by the Court on the Judiciary or the Professional Responsibility Tribunal, or for establishing standards of conduct in an action against a lawyer.

SECTION 1. LAWYERS' RESPONSIBILITIES TO THE PUBLIC

1.1 We understand that the law is a learned profession and that among its tenets are devotion to public service, improvement of the administration of justice, and access to justice for our fellow citizens.

1.2 A lawyer's word should be his or her bond. We will not knowingly misstate, distort or improperly exaggerate any fact, opinion or legal authority, and will not improperly permit our silence or inaction to mislead anyone. Further, if this occurs unintentionally and is later discovered, it will immediately be disclosed or otherwise corrected.

1.3 We will donate legal services to persons unable to afford those services.

1.4 We will participate in organized activities designed to improve the courts, the legal system and the practice of law.

1.5 We will contribute time on a pro bono basis to community activities.

1.6 Our conduct with clients, opposing counsel, parties, witnesses and the public will be honest, professional and civil.

1.7 Our public communications will reflect appropriate civility, professional integrity, personal dignity, and respect for the legal system and the judiciary. However, we may make good faith expressions of dissent or criticism in public or private discussions when the purpose is to promote improvements in the legal system.

1.8 We will not make statements which are false, misleading, or which exaggerate, for example, the amount of damages sought in a lawsuit, actual or potential recoveries in settlement or the lawyer's qualifications, experience or fees.

1.9 We will promptly return telephone calls and respond to correspondence from clients, opposing counsel, unrepresented parties and others.

1.10 We will refrain from engaging in professional conduct which exhibits or is intended to appeal to or engender bias against a person based upon that person's race, color, national origin, ethnicity, religion, gender, sexual orientation or disability.

SECTION 2. LAWYERS' RESPONSIBILITIES TO CLIENTS

2.1 We will be loyal and committed to our client's lawful objectives, but will not permit our loyalty to interfere with giving the client objective and independent advice.

2.2 We will advise our client against pursuing litigation (or any other course of action) that does not have merit.
2.3 We will endeavor to achieve our client's lawful and meritorious objectives expeditiously and as efficiently as possible.

2.4 We will continually engage in legal education and recognize our limitations of knowledge and experience.

2.5 We will reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect a client's lawful objectives.

2.6 We will advise our client, if necessary, that the client has no right to demand that we engage in abusive or offensive conduct and that we will not engage in such conduct.

2.7 We understand, and will impress upon our client, that reasonable people can disagree without being disagreeable; and that effective representation does not require, and in fact is impaired by, conduct which objectively can be characterized as uncivil, rude, abrasive, abusive, vulgar, antagonistic, obstructive or obnoxious. Ill feelings between clients will not dictate or influence a lawyer's attitude, demeanor, behavior or conduct.

2.8 We will always look for opportunities to de-escalate a controversy and bring the parties together.

2.9 We will readily stipulate to undisputed facts in order to avoid needless costs, delay, inconvenience, and strife.

2.10 We will consider whether the client's interests can be adequately served and the controversy more expeditiously and economically resolved by arbitration, mediation or some other form of alternative dispute resolution, or by expedited trial; and we will raise the issue of settlement and alternative dispute resolution as soon as a case can be evaluated and meaningful compromise negotiations can be undertaken.

2.11 When involved in an alternative dispute resolution process, we will participate in good faith, and will not use the process for the purpose of delay or for any other improper purpose.

2.12 We will not falsely hold out the possibility of settlement as a means to adjourn discovery or delay trial.

SECTION 3. LAWYERS' RESPONSIBILITIES TO OTHER LAWYERS

3.1 Communications with Adversaries

a. We will be civil, courteous, respectful, honest and fair in communicating with adversaries, orally and in writing.

b. We will promptly return telephone calls and respond to correspondence reasonably requiring a response.

c. The timing and manner of service of papers will not be designed to annoy, inconvenience or cause disadvantage to the person receiving the papers; and papers will not be served at a time or in a manner designed to take advantage of an adversary's known absence from the office.

d. We will not write letters ascribing to an opposing lawyer a position that lawyer has not taken, creating a "record" of events that have not occurred, or otherwise seeking to create an unjustified inference based on that lawyer's statements or conduct.
e. Unless specifically permitted or invited by the court, copies of correspondence between counsel will not be sent to a judge or administrative agency.

3.2 Discovery

a. General

(1) A reasonable effort should be made to conduct discovery by agreement.

(2) We will not use discovery, the scheduling of discovery, or the discovery process to annoy or harass opposing counsel, to generate needless expense, or as a means of delaying the timely, efficient and cost-effective resolution of a dispute.

(3) We will comply with reasonable discovery requests.

(4) We will object to discovery requests only when we have a good-faith belief in the merit of the objection; and we will not object solely for the purpose of withholding or delaying the disclosure of relevant information or documents.

(5) We will agree to reasonable requests for extensions of deadlines, scheduling changes and other accommodations, provided the client's legitimate rights and interests will not be adversely affected.

(6) We will seek court sanctions or disqualification only after conducting a diligent investigation, and then only when justified by the circumstances and necessary to protect the client's legitimate and lawful interests.

b. Depositions

(1) We will take depositions only when actually needed to ascertain facts or information or to preserve testimony.

(2) In scheduling depositions, reasonable consideration will be given to accommodating schedules of opposing counsel and the deponent (both professional and personal schedules), when it is possible to do so without prejudicing the client's rights. When practical, we will consult with opposing counsel before scheduling any deposition. If a request is made to schedule a time for a deposition, the lawyer to whom the request is made should confirm that the proposed time is available or advise of a conflict within a reasonable time (preferably the same business day, but in any event, before the end of the following business day).

(3) When a deposition is scheduled and noticed by another party for the reasonably near future, a lawyer ordinarily should not schedule another deposition for an earlier date without the agreement of opposing counsel.

(4) We will delay a deposition only for good-faith reasons.

(5) Prompt notice of cancellation of a deposition will be given to opposing counsel.

(6) We will not, even when called upon by a client to do so, abuse others or indulge in offensive conduct directed to other counsel, parties or witnesses. We will refrain from disparaging personal remarks or acrimony toward other counsel, parties and witnesses; and will treat adverse parties and witnesses with civility and fair consideration.
We will not ask questions about a deponent's personal affairs or which needlessly impugns a deponent's integrity when such questions are irrelevant to the subject matter of the action or proceeding, except that questions on these topics may be asked if they are likely to elicit admissible evidence.

We will avoid repetitive and argumentative questions and those asked solely for the purpose of annoyance or harassment.

We will limit deposition objections to those which are well-founded and permitted by (as applicable) the Oklahoma Discovery Code, the Federal Rules of Civil Procedure, any governing local court rules, and any applicable case law. Any such objections will be stated concisely and in a non-argumentative and non-suggestive manner. We will remember that most objections are preserved and need be made only when the form of a question is defective or when privileged information is sought.

Once a question is asked, we will not, through objections or otherwise, coach the deponent or suggest answers.

We will not direct a deponent to refuse to answer a question unless specifically permitted by (as applicable) 12 O.S. 2001, Section 3230.E.1, or Federal Rule 30(d)(1), F.R.Civ.P.

We will refrain from self-serving speeches during depositions.

We will not engage in any conduct during a deposition which would not be allowed in the presence of a judicial officer, including disparaging personal remarks or acrimony toward opposing counsel or the witness, as well as gestures, facial expressions, audible comment, or other manifestations of approval or disapproval during the testimony of the witness. We will not engage in undignified or discourteous conduct which degrades the legal proceeding or the legal profession. Our clients, colleagues and staff will be admonished to conduct themselves in the same dignified and courteous manner.

c. Document Requests

We will limit requests for production of documents to materials reasonably believed to be needed for the prosecution or defense of an action; and requests will not be made to annoy, embarrass or harass a party or witness, or to impose an undue burden or expense in responding.

We will not draft a request for document production so broadly that it encompasses documents clearly not relevant to the subject matter of the case or proceeding.

When responding to unclear document requests, receiving counsel will make a good-faith effort to discuss the request with opposing counsel to clarify the scope of the request.

In responding to document requests, we will not strain to interpret the request in an artificially-restrictive manner in an attempt to avoid disclosure.

When responding to document requests, we will withhold documents on the basis of privilege only when appropriate.
(6) We will not produce documents in a disorganized or unintelligible manner, or in a manner calculated to conceal or obscure the existence of particular documents.

(7) We will not delay producing documents to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any improper purpose.

d. Interrogatories and Requests for Admissions

(1) We will exercise discriminating judgment in using written discovery requests, and will not use them to annoy, embarrass or harass a party or witness, or to impose undue burden or expense on the opposing party or counsel.

(2) We will read and respond to written discovery requests in a reasonable manner designed to assure that answers and admissions are truly responsive.

(3) When responding to unclear written discovery requests, receiving counsel should have a good-faith discussion with opposing counsel to obviate or limit the scope of any objections to the discovery requests.

(4) We will object to written discovery requests only when a good-faith belief exists in the merit of the objection. Objections will not be made solely for the purpose of withholding relevant information. If a written discovery request is objectionable only in part, we will answer the unobjectionable portion.

3.3 Scheduling

a. We understand and will advise our clients that civility and courtesy in scheduling meetings, hearings and discovery are expected and do not indicate weakness.

b. We will make reasonable efforts to schedule meetings, hearings and discovery by agreement, and will consider the scheduling interests of opposing counsel, the parties, witnesses and the court or agency. Misunderstandings should be avoided by memorializing any agreements reached.

c. We will not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations.

d. We will not engage in delaying tactics in scheduling meetings, hearings and discovery.

e. We will verify the availability of key participants and witnesses either before a meeting, hearing; or trial date is set or, if that is not feasible, immediately afterward, and we will promptly notify the court, or other tribunal, and opposing counsel of any problems.

f. We will notify opposing counsel and, if appropriate, the court or other tribunal as early as possible when scheduled meetings, hearings or depositions must be cancelled or rescheduled.

3.4 Continuances and Extensions of Time

a. We will agree, consistent with existing law and court orders, to reasonable requests for extensions of time when the legitimate interests of our clients will not be adversely affected.

b. We will agree to reasonable requests for extensions of time or continuances without
requiring motions or other formalities, unless required by court rules.

c. We will agree as a matter of courtesy to first requests for reasonable extensions of time unless time is of the essence.

d. After agreeing to a first extension, we will consider any additional request for extension by balancing the need for prompt resolution of matters against the consideration which should be extended to an adversary's professional and personal schedule, the adversary's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if requested to do so.

e. We understand and will advise clients that the strategy of refusing reasonable requests for extension of time simply to appear "tough" is inappropriate.

f. We will not seek extensions or continuances for the purpose of harassment or extending litigation.

g. We will not condition an agreement to an extension on unfair and extraneous terms. This Standard does not preclude a lawyer from imposing reasonable terms such as preserving rights that an extension might jeopardize or seeking fair reciprocal scheduling concessions.

h. We will agree to reasonable requests for extensions of time when new counsel is substitute for prior counsel.

3.5 Motion Practice

a. Motions will be filed or opposed only in good faith, and only when the issue cannot otherwise be resolved.

b. Before filing a non-dispositive motion, we will engage in a reasonable effort to resolve the issue. In particular, we will exercise discriminating judgment in filing any discovery motion.

c. We will not engage in conduct which forces opposing counsel to file a motion and then not oppose the motion.

3.6 Non-Party Witnesses

a. Dealings with a non-party witness will be civil, courteous and professional, and designed to instill in that witness an overall favorable impression of the legal System.

b. We will issue a Subpoena to a non-party witness only to compel such person's actual appearance at a hearing, trial or deposition, and not for inappropriate tactical or strategic purposes, such as merely to annoy, humiliate, intimidate or harass such individual.

c. When we obtain documents pursuant to a deposition subpoena, we will offer to make copies of the documents available to all other counsel at their expense even if the deposition is cancelled or adjourned.

d. We will take special care to protect a witness under the age of 14 from undue harassment or embarrassment. We also will take special care to ensure that questions are stated in a form which is appropriate to the age and development of the youthful witness.

3.7 Privacy
1. All matters will be handled with due respect for protecting the privacy of parties and non-parties.

2. We will not inquire into, attempt to use, or threaten to use facts concerning private matters, relating to any person for the purpose of gaining psychological advantage in a case. Inquiry into sensitive matters which are relevant to an issue should be pursued as narrowly as reasonably possible.

3. If there is a legitimate basis for inquiry into such private matters, we will cooperate in arranging for protective measures designed to assure that the information obtained is disclosed only to persons who need it in order to present the relevant evidence to the court or administrative agency.

3.8 Default Judgment

We will seek a default judgment in a matter in which an appearance has been made or where it is known that the defaulting party is represented by a lawyer with respect to the matter, only after giving the opposing party sufficient advance written notice to permit cure of the alleged default.

3.9 Social Relationship with Judicial Officers, Court-appointed Experts, Administrative Agency Hearing Officers and Agency Board Members

a. We will avoid the appearance of impropriety or bias in our relationships with judicial officers, court-appointed experts, administrative agency hearing officers and agency board members.

b. Prior to appearing before a judicial officer, administrative agency hearing officer or agency board member with whom we have a social relationship or friendship beyond a normal professional association, we will notify opposing counsel (or an unrepresented party) of the relationship.

c. We will disclose to opposing counsel (or an unrepresented opposing party) any social relationship or friendship between the lawyer and any court-appointed expert.

3.10 Negotiation of Business Transactions

a. We will adhere strictly to an express promise or agreement with the opposing lawyer, whether oral or in writing, and will adhere in good faith to any agreement implied by the circumstances or local custom.

b. Business transactions should be negotiated, documented and consummated in an atmosphere of cooperation and informed mutual agreement.

c. Meetings, conferences and closings with opposing lawyers and clients will be scheduled at the most practical location.

d. We will make every effort to appear promptly with our clients at a scheduled meeting; and the lawyer who provides facilities for a meeting will be prepared to receive the opposing lawyer and his or her client at the scheduled time.

e. We will clearly identify, for other counselor parties, all requested changes and revisions that we make in documents.

f. Correspondence will not be written to ascribe to an opposing lawyer a position he or she has not taken or to create a "record" of events which have not occurred.
SECTION 4
LAWSYERS' RESPONSIBILITIES TO THE COURTS AND ADMINISTRATIVE AGENCIES

4.1 We will speak and write civilly and respectfully in all communications with the court or administrative agency.

4.2 We will be punctual and prepared for all appearances so that all conferences, hearings and trials may commence on time.

4.3 We will be considerate of the time constraints and pressures on the court, agency and related staff inherent in their efforts to fulfill their responsibilities.

4.4 We will not engage in conduct which brings disorder or disruption to a proceeding. We will advise our clients and witnesses of the proper conduct expected and required and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

4.5 We will never knowingly misrepresent, mischaracterize, misquote, miscite facts or authorities, or otherwise engage in conduct which misleads the court or agency.

4.6 We will avoid argument or posturing through sending copies of correspondence between counsel to the court or agency, unless specifically permitted or invited by the court or agency.

4.7 Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court or tribunal of any problems.

4.8 We will act and speak civilly and respectfully to all other court and tribunal staff with an awareness that they, too, are an integral part of the system.

4.9 Writings Submitted to the Court or Tribunal

a. Written materials submitted to a court or tribunal will be factual and concise, accurately state current law, and fairly represent the party's position without unfairly attacking the opposing party or opposing counsel.

b. Facts that are not properly introduced in the case and part of the record in the proceeding will not be used in briefs or argument.

c. Copies of any submissions to the court or tribunal will be provided simultaneously to opposing counsel by substantially the same method of delivery by which they are provided to the court or tribunal.

d. We will avoid disparaging the intelligence, ethics, morals, integrity, or personal behavior of the opposing party, counselor witness unless any such characteristics or actions are directly and necessarily at issue in the proceeding.

e. We will promptly submit to opposing counsel for review and approval any written order or judgment proposed by us prior to submitting it for entry by any court or tribunal.

f. We will promptly review and approve, or submit proposed changes, modifications or revisions of, any order or judgment proposed
by opposing counsel within a brief time period of its receipt.

g. We will not unreasonably delay the entry of any order or judgment of any court or tribunal.

4.10 Ex Parte Communications with the Court

a. Except as permitted in Section 4.10(c) below, we will avoid ex parte communications involving the substance of a pending matters with an assigned judge (and members of the judge's staff) and an agency hearing officer or board member in an individual proceeding, whether in person (including social, professional or other contexts), by telephone, and in letters or other forms of written communication, unless such communications relate solely to scheduling or other nonsubstantive administrative matters, or are made upon advice and consent by all parties, or are otherwise expressly authorized by statute or applicable rule.

b. Even when applicable laws or court or agency rules permit an ex parte application or communication to the court or agency, before making any such application or communication, we will make diligent efforts to notify the opposing party or a lawyer known or likely to represent the opposing party; and we will make reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be represented.

c. When rules permit an ex parte application or communication to the court, hearing officer or board member in an emergency situation, we will make any such application or communication (including an application to shorten an otherwise applicable time period) only when there is a bona fide emergency such that our client will be seriously prejudiced if the application or communication were made with regular notice.

d. We will immediately notify opposing counsel of any oral or written communication with the court or agency.

e. Only lawyers will communicate with a judge or appear in court on substantive matters on behalf of a client. Non-lawyers may communicate with court personnel regarding scheduling matters and other non-substantive matters.

SECTION 5. JUDGES' RESPONSIBILITIES TO LITIGANTS AND LAWYERS

5.1 We will be courteous, respectful and civil to lawyers, parties and witnesses. We will maintain control of the proceedings, recognizing that we have both the obligation and the authority to ensure that all proceedings are conducted in a civil manner.

5.2 If we observe a lawyer being uncivil to another lawyer or others, we will tactfully call it to the attention of the offending lawyer on our own initiative.

5.3 We will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses.

5.4 We will be punctual in convening all hearings, meetings and conferences; if delayed, we will notify counsel, if possible.
5.5 In scheduling all hearings, meetings and conferences, we will be considerate of time schedules and prior commitments of lawyers, parties and witnesses.

5.6 We will make a reasonable effort to decide promptly all matters presented to us for decision.

5.7 We will give the issues in controversy deliberate, impartial and studied analysis and consideration.

5.8 While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

5.9 We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a party has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

5.10 We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom, or the causes which, that lawyer represents.

5.11 We will do our best to ensure that court personnel act civilly and respectfully toward lawyers, parties and witnesses.

5.12 We will avoid procedures that needlessly increase litigation expense.

SECTION 6. JUDGES' RESPONSIBILITIES TO EACH OTHER

6.1 In all opinions and other written and oral communications, we will refrain from disparaging personal remarks, criticisms, or sarcastic or demeaning comments about a judicial colleague.

6.2 We will endeavor to work with other judges in an effort to foster a spirit of cooperation in furtherance of our mutual goal of promoting and nurturing the administration of justice.

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AMERICAN BAR ASSOCIATION
MODEL LAWYER ASSISTANCE PROGRAM, August 1995

Rule 1. Establishment of Lawyer Assistance Program (LAP)

A. Establishment. The [state's highest court] [bar association] hereby establishes a state-wide lawyer assistance program that will provide immediate and continuing help to lawyers, judges and law students who suffer from physical or mental disabilities that result from disease, disorder, trauma or age and that impair their ability to practice.

B. Purpose. The LAP has three purposes:

(1) to protect (the interests of) clients from harm caused by impaired lawyers;

(2) to assist impaired lawyers in recovery; and

(3) to educate the bench and bar to the causes of and remedies for the impaired lawyer.

C. Funding. The [state's highest court] [bar association] should insure stable and continual funding, either from dues or assessments of the bar generally. Appropriate accounting of all funds is essential.

Commentary

Paragraph A is a restatement of Principle #1, Guiding Principles for a Lawyer Assistance Program,
Impairment of a lawyer's performance may result from physical, mental or emotional illness, including addiction to alcohol and other drugs. Impairment may also result from circumstantial problems of the lawyer in family, financial or other areas. The stress of practice adversely affects some members of the bar, as do pathological gambling, depression, necroses and other health problems.

Lawyers and judges, at least as often as members of any other profession or occupation, fail to seek professional help for these problems. This is as true of those suffering from negative stress syndrome or alcoholism as it is of those with depression and high blood pressure. Denial is a factor in this problem. Frequently the manifestations of illness are submerged in the clutter of other important influences on a lawyer's life while the effects of the illness on his or her practice are still minimal. In many cases the remedy can be as simple as peer support; others, however, require professional, medical or other health care.

Lawyer assistance programs (LAPs) are needed to address these problems in a remedial fashion and also to provide preventive intervention for them, in order to improve the quality of lawyers' lives and to minimize the danger to clients. LAPs are designed to provide confidential service in prevention, intervention, evaluation and counseling, both peer and professional, as well as referral to professional help and ongoing monitoring.

Rule 2. Board of Directors

A. Members. The [state's highest court] [bar association] should appoint a Board of Directors to administer the lawyer assistance program. The creating agency should appoint a chair annually with input from the current Board chair and director.

B. Composition. The Board of Directors should consist of (fifteen) directors, chosen on the basis of geographical convenience and the size of the bar. The directors should have diverse experience, knowledge and demonstrated competence in the problems of addiction and other common difficulties that impair lawyers.

C. Terms. Members should be appointed for a [three] - year term. Appointments should be on a staggered basis so that the number of terms expiring should be approximately the same each year. No members should be appointed for more than [one] term.

D. Duties of the Board. The Board of Directors should have the following powers and duties:

(1) The Board will be responsible for establishing the LAP's policy and procedures.

(2) The Board should have general administrative and management responsibility to operate the program to achieve its purpose and goals.

(3) The duties listed under Rule 3C would be assumed by the Board in the absence of a director of the program.

E. Meetings. The Board generally meets on a [bi-monthly] basis or upon call of the chair with adequate notice to all members. The actions of the Board are governed by these regulations, the by-laws of the creating agency and the applicable rules of discipline for the bar.

F. Quorum. A majority of the members of the Board must be present to constitute a quorum at any meeting. The Board acts on a majority vote of members in attendance at any Board meeting where a quorum is present.

Rule 3. Director of the Program

A. Appointment/Hire. The Board will assist the [state's highest court] [bar association] in hiring a director.

B. Qualifications. At a minimum the director should be either a person with several years
experience in recovery, or a qualified mental health professional with addiction treatment experience. The director must have sufficient experience and training to enable him/her to identify and assist impaired lawyers.

Commentary

The position of director is of the highest importance and an experienced person at an appropriate salary should be carefully selected. Experience has shown that lawyers who have been in active recovery for at least three years are well suited to serve in such a position. The Commission does not limit the selection to this group as several existing state programs have highly effective nonlawyer directors.

C. Duties and Responsibility. The director's job will require that her/she:

(1) Provide initial response to most help line calls.

(2) Help lawyers, judges, law firms and courts to identify and intervene with impaired lawyers.

(3) Help members of the legal community and their families to secure expert counseling and treatment for chemical dependency and other illnesses, maintaining current information on available treatment services, [both those that are available without charge as well as paid services.]

(4) Establish and maintain regular liaison with other bar functions, agencies and committees that serve either as sources of referral or resources in providing help.

(5) Establish and oversee monitoring services with respect to recovery of lawyers for whom monitoring is legally prescribed.

(6) Plan and deliver educational programs for the legal community with respect to all sources of potential lawyer impairment, as well as treatment and preventative measures.

(7) Continually inform the bar, the courts and the families of lawyers of the types and availability of LAP services.

(8) Recruit, select and train lawyer volunteer counselors.

Commentary

Treatment resources will include self-help support groups, community recovery programs, counselors, other professionals and treatment centers.

The Commission believes it is important to enlist the aid of as many volunteer lawyers as possible to assist in a variety of functions for the LAP. This includes not only those with experience in recovery but also those who are willing to assist impaired members in their practices while they convalesce or begin any recovery process. In the absence of a director, these delineated duties will be assumed by the Board.

Rule 4. Volunteer Counselors

The [director] [Board] enlists volunteer counselors whose work includes:

(1) assisting in interventions planned by the LAP;

(2) acting as twelve step program sponsors;

(3) providing testimony related to recovery for the impaired lawyer at the request of the lawyer; and

(4) providing liaison between the LAP and law schools, courts and bar organizations.

Commentary

Volunteer counselors and lawyers and judges, who usually are in recovery from chemical dependency or other medical programs or have training in the art of counseling and are willing to volunteer their time and assistance to suffering fellow lawyers. These functions are all performed under the guidelines established by the LAP's directors.
Rule 5. Services Provided by the Lawyer Assistance Program

The Lawyer Assistance Program [LAP] will provide the following services through its Board of Directors or its volunteer counselors.

(1) Provide immediate and continuing help at no cost to lawyers and judges who suffer from physical or mental disabilities that result from disease, disorder, trauma or age and that impair their ability to practice.

(2) Plan and present educational programs to increase the awareness and understanding of members of the bench and bar about problems of impairment, to enable members of our profession to recognize problems in themselves and in their colleagues, to identify the problems correctly; to reduce stigma and to understand appropriate ways of interacting with affected individuals.

(3) Provide evaluation, intervention, treatment and monitoring to bar applicants, law students, judges, lawyers and their firms, including lawyers against whom disciplinary complaints are pending.

Commentary

This basic aid is offered no matter what the referral source. To perform these functions the LAP works with state and local bar organizations and existing lawyer assistance committees as well as law schools and other bar and court related organizations. Generally, cooperation with LAP services will be voluntary, but the plan envisions cases in which evaluation and/or treatment may be required by court order, as a condition of probation or even as a condition of admission to the bar in some states.

Rule 6. Referrals.

A. Self-referral. Any member of the legal profession may call LAP seeking assistance. Once contacted by the lawyer, the [director] [Board] will evaluate the possible needs of the individual and make a recommendation based upon the evaluation. Every case is different. The impaired lawyer may be put in touch with a lawyer or peer counselor in his or her geographical area of the state.

B. Referrals from Various Agencies and/or Court System. Rules of discipline should be developed that will authorize the LAP to handle referrals from disciplinary agencies.

Commentary

Disciplinary agencies frequently receive complaints which may be the result of impairment problems. With a proper referral mechanism in place, many lawyers may be assisted before the need for disciplinary enforcement is necessary. This comment is derived from Guiding Principle #7 - Impairment programs and disciplinary agencies should establish and maintain a system for the referral of lawyers with impairment problems to the assistance program.

Currently, participation in the LAP is voluntary. However, the program may be used by various referring agencies as a monitoring agency. The LAP should be authorized to report the results of any such referral to the referring agency. Each lawyer who is referred to the LAP will be informed that the LAP is authorized to report to the referring agency and the lawyer may be asked to sign the appropriate release of information forms providing for such disclosure. See diversion mechanism in Model Rules for Lawyer Disciplinary Enforcement., Rule 21F.

Upon entry into the LAP, the individual may be asked to sign a contract agreeing to the terms of the LAP. Terms of the contract allow for random alcohol and/or drug testing, participation in support groups, contact with a lawyer in participation in support groups, contact with a lawyer in recovery, as well as frequent contact with the LAP director. Should an individual need inpatient or outpatient
treatment, the LAP can also offer assistance. The contract can be modified to accommodate the requirements of various referring agencies.

Some referring agencies may allow for participation in the LAP as an option to a more severe form of discipline, as a probationary measure or as a condition precedent for reinstatement.

Where a lawyer has asserted a mitigating factor of substance abuse or addiction, or it appears to the referring agency that there may be a problem of addiction, the lawyer-respondent may be referred to the LAP director to assess whether alcoholism or drug addiction was a substantial contributing factor to the misconduct with which the lawyer is charged or to the claim of disability.

The LAP director will not have contact with any member of the referring agency with regard to the monitoring of a lawyer, [including any inquiry as to whether the lawyer has contacted the LAP director] unless the lawyer has executed the requisite release of information forms providing for such disclosure. Accordingly, the burden is upon the lawyer to accept or reject any assistance the LAP may be able to offer him/her.

If a lawyer fails to adhere to the requirements of the LAP, the director should report such failure to the referring agency.

Rule 7. Aftercare and Monitoring

The LAP will provide an aftercare/monitoring service with written guidelines to assist in the lawyer's recovery and to protect and preserve the integrity of the LAP.

Services will include:

1) Assisting the treatment providers in structuring aftercare and discharge planning for lawyers receiving treatment.

2) Providing assistance for the lawyer's entry into appropriate aftercare and professional peer support meetings.

3) Assisting the lawyer in obtaining a primary care physician.

4) Establishing a random urine drug screening program.

5) Tracking the lawyer's aftercare, peer support, and twelve step meeting attendance.

6) Providing assistance to the lawyer in obtaining a local peer counselor.

7) Providing documentation of compliance by the lawyer to those persons and/or agencies as required.

8) Providing testimony for those lawyers who are compliant with the requirements of the program.

Commentary

This statement under Rule 7 is derived from Guiding Principle #6 - A program for monitoring attorneys who have been brought to the attention of the disciplinary system as a result of an impairment problem should be maintained with the appropriate disciplinary agency.

The LAP should maintain a list of specialized monitors and maintain a case management file system on each lawyer/judge being monitored (subject to Rule 8) that should include: monitoring agreement; medical assessments, monitor's reports, drug screen results, periodic LAP evaluation, notes, correspondence, etc.

The Monitoring Agreement should include; acknowledgments and consents; duration; treatment plan; verification of compliance; confidentiality; authorizations, financial responsibilities; revisions; liability; release and indemnification notifications; withdrawal; termination; and provisions of agency. The LAP may recommend revisions to individual monitoring agreements that should include: change of monitor; increased recovery meeting attendance; medical evaluation and treatment; aftercare counseling; drug screens; etc.

The LAP should not maintain any records as to the names of the participants or the nature of their participation except when the lawyer is part of a court or disciplinary referred monitoring program.

Commentary

The only information kept will be a statistical number of those people who utilize and access the LAP, which statistical data should be accumulated on at least a quarterly basis.

Rule 9. Confidentiality and Immunity

A. Confidentiality. The state's largest court should provide that any person seeking assistance from the LAP will be guaranteed confidentiality as to all communications directed to LAP staff, volunteer counselors and persons providing information or other assistance. (Guiding Principle #2 - Appropriate protection should be furnished for the confidentiality of those who seek and provide help through authorized programs.)

Commentary

Experience demonstrates that fear of disclosure keeps many from seeking help from court and bar related agencies. Not only must the LAP guarantee confidentiality but this aspect of the LAP function also must be widely advertised. The LAP must emphasize that it will make no communication to a disciplinary agency. No communication between the LAP or anyone functioning on its behalf and any other court agency will be made unless the impaired lawyer has signed a standard form of release in advance.

Sample state confidentiality rules are available from the ABA Commission on Impaired Attorneys.

B. Immunity. The state's highest court should arrange for an appropriate form of immunity from civil liability for all persons officially participating in the LAP, including its volunteers and those making good faith reports of lawyers impairment.

Commentary

Paragraph B is derived from Guiding Principle #3 - Members of the profession who serve in lawyer assistance programs should be immune from civil liability, except for willful or wanton acts. Volunteers who give of their time and efforts to assist those with impairment problems should not be liable in damages for acts done in good faith. Sample state immunity rules are available from the ABA Commission on Impaired Attorneys.

The LAP will not provide legal advice to its impaired lawyers or referring agencies.

Rule 10. Facility

The office should be located outside the state bar association building and maintain an "800" confidential hotline number. Only the LAP staff may have access to the "800" hotline number.

Commentary

If the LAP must be located within the bar facility it should be in a private area without heavy traffic and the director should be prepared to meet some of his or her clients outside the building. Such physical separateness should be maintained in keeping with the program's commitment to confidentiality and anonymity.

Rule 11. Program Review

The lawyer assistance program should be reviewed periodically by the Board or the ABA Commission on Impaired Attorneys.

Commentary

Guiding Principle #10 states that: "Periodic review of the programs by the bar responsible for its sponsorship is essential to the proper functioning of the program. This review should assure that the programs are effective, are staying current with new developments for handling impaired lawyers and are functioning in accordance with the ABA Guiding Principles and those establishes locally for the LAP's operation."

The Commission will provide site visits and evaluations of state and local programs as well as
assistance upon request in recommending methods for carrying out the objectives and strategies discussed in this proposal.
- Call in Confidence
- Personal Attention
- Referral for Substance Abuse
- Referral for Depression
- Referral for Other Emotional and Physical Problems
- Statewide Assistance

LAWYERS HELPING LAWYERS

A Committee of the Oklahoma Bar Association

A Referral Resource for Lawyers Who May Be Impaired Due to Substance Abuse or Other Emotional or Physical Causes

1-800-364-7886
Strictly Confidential

1-800-364-7886 (Strictly Confidential)
P.O. Box 495
Oklahoma City, OK 73101
The Lawyers Helping Lawyers Committee (LHL) was first established by the Oklahoma Bar Association in 1985 and is a program to assist members who are having difficulties which adversely affect their practice.

The purpose of the LHL Committee is to develop and maintain an organization within the Oklahoma Bar Association which can respond to and assist the impaired attorney through direct contact and appropriate referral, to assure the public of competent and quality legal representation.

The work of the Committee is designed to be informal, helpful, confidential and responsive to the special situation faced by the impaired attorney.

The Committee does not provide treatment.

**WHAT IS AN IMPAIRED LAWYER?**

The overwhelming majority of calls received by the LHL program, and by similar programs in other state bar associations, deal with lawyers whose lives and practices are being ruined by a drug or alcohol abuse problem. This is not at all surprising because some researchers have estimated a 15 percent rate of alcoholism and other substance abuse among professional people, including lawyers, judges and other legal professionals. This means there could be as many as 1,400 lawyers in Oklahoma in one stage or another of chemical dependency. To address this problem, the program has a network of lawyers who are well acquainted with the disease of alcoholism or chemical dependency and who are willing to devote their time and energy to help others find recovery.

Other attorneys can sometimes be crippled by depression or other emotional problems. Committee members are also prepared to deal with problems due to physical illness, as well as senility, divorce, or stress.

**HOW THE COMMITTEE WORKS**

Lawyers Helping Lawyers provides CONFIDENTIAL help to an impaired lawyer. By statute and by OBA Resolution any information received by the program must remain completely confidential. The Committee’s 800 number is answered only by LHL staff members. Information regarding a possibly impaired lawyer is often received from the lawyer himself or herself, or from family, friends, partners, even clients. Once contract is made, the lawyer is referred directly to an LHL Committee member who then begins a confidential referral and continues to assist the impaired lawyer in seeking help.

If you fear that you or some lawyer has become impaired and you want to get confidential help to determine whether an impairment exists and/or help for that impairment, simply call the LHL at 1-800-364-7886, or direct your inquiry by mail to LHL, P.O. Box 495, Oklahoma City, OK 73101.

Your call will be confidential.

**RECOVERY IS THE GOAL**

The Committee does not involve itself in punishing, disciplining or otherwise inventing consequences for an impaired lawyer. Our goal is to assist attorneys to return to full health and to regain their ability to serve the public competently.

However, from time to time, the Oklahoma Supreme Court will require that a lawyer who is already undergoing disciplinary proceedings be monitored and assisted by the LHL Committee according to Supreme Court guidelines.

*We hope the information contained in this pamphlet will encourage impaired attorneys, their colleagues, friends and families to seek confidential assistance.*
CLIENTS' SECURITY FUND RULES (approved by the Oklahoma Supreme Court Feb. 11, 1991, as amended) [These rules may be found in the HANDBOOK ISSUE of the OKLA. B. J.]

It is the desire of the members of the Oklahoma Bar Association, for the purpose of reimbursing losses to clients to the extent deemed proper and feasible by the Clients' Security Fund Committee and the Board of Governors, which losses occur on very infrequent occasions through the dishonest conduct of persons practicing law in the State of Oklahoma and which conduct is in violation of their oath as members of our honorable profession, solemnly taken at the time of their admission to practice before the Supreme Court of the State of Oklahoma; that thereby the integrity and good name of the legal profession as a whole shall not be affected by such dishonest acts of the few.

I. Clients' Security Fund Policy Rules

A. There is hereby established a Clients' Security Fund Committee of the Oklahoma Bar Association (hereafter called the Committee).

B. The Committee shall consist of fifteen persons appointed by the President with the approval of the Board of Governors, for the terms as follows; five for one year, five for two years, five for three years. After the initial appointments, each subsequent appointment shall be for a term of three years. At least one appointee each year shall be a person who is not a lawyer. Vacancies shall be filled by appointment by the President for the unexpired term.

C. The Committee is authorized to consider claims for reimbursement of losses arising after the effective dates of the original resolution and caused by the dishonest conduct of a lawyer, acting as a lawyer, where said lawyer is a practicing member of the Bar of Oklahoma, maintains an office for the practice of law in the State of Oklahoma and has died, has been adjudged mentally ill, appropriate disciplinary action has been completed or he shall have resigned or permitted his license to practice to lapse after disciplinary proceedings shall have been commenced against him.

D. The Board of Governors, upon consideration of the Committee's recommendations shall be authorized and empowered to honor, pay, or reject such claims in whole or in part to the extent that funds are available. All reimbursement shall be a matter of grace, not right, and no client and no member of the public shall have any right in the Clients' Security Fund as third-party beneficiary or otherwise. If the plan is self-insured, the payment of the claims will be determined at one time or at about the end of each year of operation so that available funds may be equitably allocated.

E. All Petitions for Relief must be filed within five years of the loss caused by the dishonest conduct of the attorney.

F. The Committee is authorized to prescribe rules and procedures for the management of its funds and affairs, for the presentation of claims and the processing and payment thereof.

G. All sums appropriated by the Board of Governors for the use of the Committee shall be held and invested by the Treasurer of the Association in a separate fund known as the Clients' Security Fund subject to the written directions of the Committee under Committee rules.

H. The Committee may use or employ for Clients' Security Fund for all or any of the following purposes within the scope of the Committee's objectives, as heretofore outlined:

(1) To make reimbursements to clients.

(2) At its discretion, to purchase insurance to insure the integrity of the Clients' Security Fund, provided that such insurance is obtainable at reasonable costs and is deemed appropriate.

I. The expenses of this Committee shall be paid out of the general fund of the Oklahoma Bar Association.
J. The Committee shall provide a full written report of its activities, at least quarterly, to the Board of Governors of the Association, and it shall make such other reports of its activities and give only such further publicity to same as the Board of Governors may deem advisable.

K. The Committee may be abolished at any time upon the recommendation of the Board of Governors and approval of the Oklahoma Supreme Court. In the event of such abolition, all assets of the Clients' Security Fund shall be and remain the property of the Oklahoma Bar Association and usable for its general purposes by action of the Board of Governors.

L. The President shall be authorized to make the appointments to the committee with the approval of the Board of Governors.

M. Given the nature and purpose of the Fund, it is expected that members of the Association will assist Petitioners for relief without charge, deeming their service to be pro bono publico. Where an unusual amount of time and effort is expended by an attorney who assists a Petitioner, he may be awarded a modest fee out of the award. No attorney shall be compensated for presenting a petition except as authorized by the Clients' Security Fund Committee and the Board of Governors.

N. The Oklahoma Bar Association, members of its Board of Governors, members of the Committee, employees and agents of the Oklahoma Bar Association, claimants and lawyers who assist claimants are absolutely immune from civil liability for all acts of omission or commission in the course of their official duties.

O. The Purposes of the Clients' Security Fund are:

1. To furnish a means of protecting the reputation of lawyers in general from the consequences of dishonest acts of a very few.

2. To furnish a means of reimbursement to clients for financial losses occasioned by dishonest acts of lawyers:

   (a) To the extent that the Fund is capable of making reimbursements; and

   (b) If in the opinion of the Board of Governors upon consideration of the Committee's recommendation, the client is entitled to reimbursement.

   (c) In such amount as the Board of Governors, in its sole discretion, shall deem reasonable and proper, with the consideration of the Committee's recommendation.

In establishing the Clients' Security Fund, the Oklahoma Bar Association did not create, or acknowledge, any legal responsibility for the acts of individual lawyers in their practice of law. Therefore, all reimbursements of losses by the Clients' Security Fund shall be made solely at the discretion of the Board of Governors upon the recommendation of the Committee and not as matter of legal right capable of enforcement by any claimant.

II. Rules of Procedure

A. Definitions

For the purpose of these rules of procedure, the following definitions shall apply:

(1) The "Committee" shall mean the Clients' Security Fund Committee.

(2) The "Fund" shall mean the Clients' Security Fund.

(3) "Lawyers" shall include only those lawyers admitted to practice of law within the State of Oklahoma, domiciled and actively practicing law within said state.

(4) "Reimbursable Losses" shall include only those losses of money or other property of clients of lawyers which meet the following tests:

   (a) That the loss shall have been caused by the dishonest act of a lawyer while acting as a lawyer for the client.

   (b) That the lawyer shall have died, shall have been adjudged mentally ill, appropriate disciplinary action has been completed, or he shall have resigned or permitted his license
to practice to lapse after disciplinary proceedings shall have been commenced against him.

(c) That the dishonest act shall have been committed within the State of Oklahoma, or as a part of a contract of employment, the major portion of which was to be performed within said State.

(5) The following shall be excluded from "Reimbursable Losses":

(a) Loss of wives and other close relatives, partners, servants and employees of lawyers; and

(b) Losses the proof of which, either as to factual evidence or amount, is dependent upon inventory computation or profit and loss computation.

(c) Losses covered by any bond, surety agreement, or issuance contract, to the extent covered thereby.

(d) Losses for which the client has received reimbursement from any source.

(6) As used in these rules "Dishonest Conduct or Acts" means any of the following:

(a) Wrongful acts committed by a lawyer in the nature of theft, or embezzlement of money or the wrongful taking or conversion of money, property or other things of value; or

(b) Refusal to refund unearned fees received in advance where the lawyer performed no services or such an insignificant portion of the service that the refusal to refund the unearned fee constitutes a wrongful taking or conversion of money.

III. Manner of Making Application for Reimbursement

Applications to the Fund for reimbursement for loss suffered by clients as the result of dishonest acts of lawyers shall be in writing and shall be addressed and delivered to the Director of the Oklahoma Bar Association for transmission to the Chairman of the Committee. Said applications shall be in such form as the Committee may prescribe, and shall contain the following minimum information.

A. The name of the "Lawyer".

B. The amount of the "Reimbursable Loss", and

C. The date or period of time during which the loss was incurred, together with a sufficient statement of facts to show that the loss is in fact a "Reimbursable Loss" as hereinafter defined.

D. A copy of the application submitted to the Committee shall be mailed or served on the affected attorney at his or her last known address by the Office of the General Counsel. Included with the application shall be a notice that the claim has been received and will be considered by the Committee and that the attorney is invited to submit any statement or documentary evidence either in favor or against said claim. The notice shall also state that if the claim is paid, the Committee may be entitled to subrogation of the claim against the attorney and that reimbursement of the Clients' Security Fund will be a condition of any application for reinstatement.

IV. Processing and Allowance of Applications

Applications submitted to the Committee shall be referred by the Chairman to the General Counsel or other Staff of the Oklahoma Bar Association for investigation and recommendations as to the validity of the claim included in the application.

The reports of investigation and the recommendations thus made shall be submitted to the Committee as a whole. The Committee, during the month of December of each calendar year, in its sole discretion shall determine the amount of loss for which any client shall be reimbursed and in making
such determination the Committee shall consider, inter alia, the following:

1. The conduct, if any, of the client which contributed to the loss,

2. The comparative hardship the client has suffered by the loss,

3. The total amount of applications for reimbursement which have been submitted by the clients of any one lawyer or association of lawyers, and

4. All claims against the Clients' Security Fund shall be presented to the Clients' Security Fund Committee for its consideration. In December of each year the Clients' Security Fund Committee shall make a written report to the Board of Governors of the Oklahoma Bar Association setting forth the Committee's recommendations with regard to all claims considered by the Committee during the preceding year. The Board of Governors shall consider the recommendations of the Clients' Security Fund Committee and make a final determination of approval or rejection of each claim. After the Board of Governors has made a final decision regarding all the claims for the preceding year, the Executive Director shall compute the total dollar amount of all claims approved by the Board of Governors. If the total dollar amount of the approved claims does not exceed the annual aggregate amount of reimbursement as specified in paragraph 6 of this section, the Executive Director shall promptly pay all the approved claims. If the total dollar amount of the approved claims exceeds the annual aggregate amount of reimbursement, the Executive Director shall pay all approved claims on a pro rated basis so that the same percentage of each approved claim is paid and the total dollar amount of the prorated claims paid equals the annual aggregate amount of reimbursement.

5. The President of the Association and the Budget Committee shall budget for the benefit of the Clients' Security Fund sufficient money from the annual budget so that the Clients' Security Fund shall have in it as of January 1 of each year the sum of $100,000.00. The Association shall also establish a Clients’ Security Permanent Fund, the income of which shall be used to increase the annual aggregate amount available for reimbursement of claimant losses. The Permanent Fund shall be funded in the following manner: In the event that the total dollar amount of the approved claims in any one year does not exceed the annual budgeted $100,000.00 amount plus any earned income from that amount, the remaining balance of the budgeted amount and earned income shall be added to the Clients’ Security Permanent Fund. The Permanent Fund shall also include other funds received by the Board relating to Client Security including voluntary contributions or subrogation or restitution received for claims paid. The appropriated annual funds and the other funds of the Clients’ Security Fund shall be invested at the direction of the Board of Governors and the income from such investment shall be added to the Clients’ Security Fund to be used in the manner prescribed herein. Nothing herein shall create any obligation on the part of the Association to fund or pay all approved claims.

6. The aggregate amount of reimbursement for any calendar year that is payable by the Clients’ Security Fund is hereby set as the budgeted amount, $100,000.00, plus any current income from the Permanent Fund and the budgeted $100,000. In the event that it is determined to purchase insurance to insure the integrity of the Fund in making payments of reimbursement in accordance with Section II(H)(2), principal and income of the annual budgeted amount and the Permanent Fund may be used for any such purpose.

7. The Board of Governors, subject to approval by the Oklahoma Supreme Court, may from time to time change or modify the maximum amount of reimbursement payable by the Clients’ Security Fund.

8. Claimant shall be reimbursed for losses in amounts to be determined in the sole discretion of the Board of Governors. Reimbursement, if any, shall not include interest, incidental, consequential and out of pocket expenses.
9. If the claimant is a minor or an incompetent, the reimbursement may be made to any person or entity for the benefit of the claimant.

10. Although the rules set forth herein establish procedures for the processing of the claims seeking reimbursement from the Fund, they are not intended to nor do they create a substantive right to reimbursement, compensation, damages or restitution for a lawyer's dishonest act.

11. The Oklahoma Bar Association, members of its Board of Governors, members of the Committee and the agents and employees of the Oklahoma Bar Association are not guarantors of honesty or integrity in the practice of law. Dishonest conduct by a member of the Bar imposes no separate legal obligation on the profession collectively, or on the Clients' Security Fund, to compensate for a lawyer's misconduct. The Fund is a Bar-financed public service of the Bar Association with the intent to promote public confidence in the administration of justice and the integrity of the legal profession, and therefore payment of reimbursement of losses is a matter of grace and discretion by the Board of Governors.

12. The recommendations made by the Clients' Security Fund Committee or the decision made by the Board of Governors of the Oklahoma Bar Association pursuant to these rules shall be final.

V. Subrogation for Reimbursements Made

In the event reimbursement is made to a client, the Fund shall be subrogated in said amount and may bring such action as it deems advisable against the lawyer, his assets or his estate, either in the name of the client or in the name of the Oklahoma Bar Association. The client shall be required to execute a subrogation agreement in said regard.

The client shall be entitled to bring an action for recovery of losses directly against the lawyers, his assets or his estate if the Committee has not done so within six months of execution of the subrogation agreement. Any amounts recovered from the lawyer, either by the Committee or the client, in excess of the amount to which the fund is subrogated, less the Committee's actual costs of such recovery, shall be paid to or retained by the client as the case may be.

VI. Meetings of the Committee

The Committee shall meet from time to time upon call of the Chairman, provided that the Chairman shall call a meeting at any reasonable time at the request of at least two members of the Committee.

VII. General Provisions

No publicity shall be given to the rules of procedure, to applications for reimbursement, payments made by the Committee or to any action of the Committee without the express prior approval of the Board of Governors of the Oklahoma Bar Association. Subject to such express prior approval:

(1) The Committee is authorized to prepare, use and distribute an informational brochure detailing the rules of procedure and activities of the Committee for the purpose of assisting fund claimants in the preparation of their applications and informing the general public of the purpose and aims of the Committee. Copies of the informational brochure shall also be made available to the general public. The contents of the brochure shall be reviewed and approved by the Board of Governors; and

(2) Annually, after review and consideration of claims by the Board of Governors, the Committee shall prepare and distribute a summary of activities containing information regarding the purpose and aims of the Committee, the number of claims submitted, the number of claims paid, the amount of such payments and the name of successful claimant and affected attorney. The summary may only be published by the Board of Governors. The Committee shall not include specific information regarding claims which were not paid or any claim application against an attorney who was not involved in a “reimbursable loss” as defined under Rule II(A)(4).

B. These rules may be changed at any time by a majority vote of the Committee if said changes are
approved by the Board of Governors of the Oklahoma Bar Association and the Oklahoma Supreme Court.

PROBLEMS 7 & 8

ADDENDUM

AGREEMENT FOR REPRESENTATION IN CIVIL CASE
(Fee Contingent Upon Recovery)

The undersigned, JANE DOE, (hereinafter referred to as CLIENT whether collective or singular), hereby employs MICHEAL SALEM, A PROFESSIONAL CORPORATION (hereinafter referred to as ATTORNEY), for the purpose of representation of CLIENT, in the following captioned matter(s):

Representation in action against ELEPHANT TRUCKING, INC., car accident on June 29, 1998 to commence in the District Court of Cleveland County.

ATTORNEY accepts employment and will represent CLIENT in the above captioned case only upon the terms and conditions herein:

1. FEE FOR SERVICES. In consideration of ATTORNEY’s services in the prosecution of this matter, CLIENT herein agree to pay the following sums:

   The total of all the attorneys’ fee settled or awarded by the court, plus a percentage of the total recovery for wages and damages as follows:

   If settled prior to trial or trial 25%; If appealed 33%; If appealed and retrial 40%

   This is a fee contingent upon recovery by judgment, settlement or otherwise. If ATTORNEY is not successful in recovery, CLIENT will owe ATTORNEY nothing.

   In consideration of the merits of any proceedings beyond the trial court proceedings, ATTORNEY shall be entitled to decline future representation beyond trial if, in ATTORNEY’S professional judgment, success on appeal is speculative or not well grounded in fact or law or a good faith argument for the extension of present law.

2. COSTS, EXPENSES AND WITNESS FEES. In addition to the attorney fee herein, CLIENT will pay from any recovery, all costs and expenses of this action, including court costs, fees for court services, expenses for the transcription of court proceedings, expert witnesses, Westlaw legal research, associate counsel, travel expenses, lodging outside of Norman, Oklahoma, investigators, photocopying charges, telephone charges, and postage. Generally, except for normal and customary fees such as court costs or other routine expenses, ATTORNEY will consult with CLIENT prior to any substantial or extraordinary expenditure related to this litigation. Employment of any associate counsel, investigators or expert witnesses will be at the sole discretion of ATTORNEY and they will report only to ATTORNEY. Attorney will generally consult with CLIENT prior to any such employment.

3. SOLE REPRESENTATION IN THIS PROCEEDING AND EXCLUDING APPEAL. This Agreement does not cover any representation in other matters or proceedings such as administrative hearings (except administrative proceedings that may be a part of this proceeding), other civil actions or any other criminal or juvenile proceedings. This Agreement also does not constitute an agreement by ATTORNEY for the representation on appeal except by attorney’s separate determination after concluding the trial proceedings as provided in Paragraph 1.

4. FAVORABLE OUTCOME NOT WARRANTED. ATTORNEY makes not warranties regarding successful termination of this matter or guarantees any particular outcome. All discussions or expressions related thereto are matters of the ATTORNEY’S opinion only.
5. SETTLEMENT AUTHORITY AND LIEN. ATTORNEY will make no settlement without first consulting CLIENT and obtaining CLIENT'S approval. This firm shall have an attorney’s lien from any recovery received including any settlement CLIENT undertakes or obtains on CLIENT'S own behalf or by substitution of counsel. This lien is for payment of all attorneys fees to which ATTORNEY shall be entitled and reimbursement of all costs and expenses advanced.

6. POWER OF ATTORNEY. If this is a case in which there is a recovery, CLIENT authorizes ATTORNEY to receive the proceeds of any settlement or payment of any judgment and to endorse any draft, check or settlement payment on CLIENT'S behalf, to deduct from the proceeds any fees, costs or expenses due or advanced by ATTORNEY and to disburse the balance of such proceeds to CLIENT. In the event that ATTORNEY has employed any expert witnesses or if there are other outstanding expenses related to the litigation, ATTORNEY shall be entitled to deduct any such bill or expense from CLIENT'S portion and pay all such providers directly upon disbursement of the proceeds of judgment or settlement.

7. TRUTHFUL REPRESENTATIONS OF CLIENT; CONTACT WITH OPPOSING PARTY OR ATTORNEYS. CLIENT represents that all statements and representations between ATTORNEY and CLIENT regarding all matters relating to any issue of ATTORNEY’S representation or the subject matter of these proceedings are truthful and accurate. In the event CLIENT’S statements and representations are not truthful and accurate, ATTORNEY shall be entitled to withdraw from representation and refund the unused portion of any fee or expense, if any, except any amount subject to any minimum fee provision herein. CLIENT will immediately contact ATTORNEY if CLIENT is directly contacted by anyone on behalf of or from the opposing party in this matter.

8. CLIENT’S ADDRESS AND PHONE NUMBER. CLIENT will keep ATTORNEY advised of CLIENT’S current address and telephone number at all times.

9. DISCHARGE AND WITHDRAWAL. CLIENT may discharge this firm at any time. ATTORNEY may withdraw from continued representation with your consent or for good cause. Good cause includes your breach of this Agreement, a determination of facts by ATTORNEY which, in ATTORNEY’S reasonable judgment, would destroy or substantially harm the likelihood of success or the ability to recover damages; CLIENT’S refusal to cooperate with this firm or to follow our advice on a material matter or any fact or circumstance that would render our continuing representation either unlawful or unethical. If you discharge us, you must pay us for the time we have spent on your case in accordance with the contingency provisions in effect at the time of discharge or, if no contingency provision should exist, at ATTORNEY’S normal hourly rate plus reimbursement of all expenses, whichever is greater, the contingency arrangement or the hourly rate.

10. PERSONAL SERVICES. This Agreement shall be construed as a contract for personal services.

11. EFFECT. This Agreement does not take effect until you have signed it and returned to the attorney and the attorney signs it.

12. GOVERNING LAW. The laws of the State of Oklahoma shall govern the construction and interpretation of this Agreement.

DATED: April 15, 1999

BEFORE YOU SIGN, PLEASE READ THIS CONTRACT AND ANY ENCLOSED LETTER CAREFULLY AND CONTACT THE ATTORNEY IF YOU HAVE ANY QUESTIONS.

CLIENT

__________________________
JANE DOE

ACCEPTANCE BY ATTORNEY
ACCEPTED on behalf of MICHEAL SALEM, A PROFESSIONAL CORPORATION this ___ day of __________________, 1996.

______________________________
MICHEAL SALEM
President

April 14, 1999

DISBURSEMENT STATEMENT

RECEIPTS:

MEDICAL PAYMENT COVERAGE

STATE FARM MUTUAL AUTO INSURANCE

10/29/90 Medical Payment - JOHN DOES$2,822.59
  Receipt
10/29/90 Medical Payment - JANE DOES$1,049.34
  Receipt
09/11/91 Medical Payment - JANE DOES$3,950.66
  Receipt

TOTAL MEDICAL PAYMENTS RECOVERY $7,822.59
payable to JOHN DOE and MARY DOE

BODILY INJURY RECOVERY

OKLAHOMA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION

09/03/91 Payment After Offset - JANE DOES$4,479.77
09/03/91 Payment After Offset - JOHN DOES$7,469.33

STATE FARM MUTUAL AUTO INSURANCE

09/11/91 UM COVERAGE - JOHN DOES$3,000.00
09/11/91 UM COVERAGE - JANE DOES$10,000.00

TOTAL BODILY INJURY AND UM RECOVERY $24,949.10

DISBURSEMENTS:

FOR JANE DOE:

On Account of State Farm (friendly suit proceeds)

To JOHN DOE, MARY DOE, on their own behalf and on behalf of JANE DOE
$7,500.00

On account of the Oklahoma Property & Casualty Insurance Guaranty Association

Party Initials _____     _____

April 14, 1999

Page 2

To JOHN DOE, MARY DOE, on their own behalf and on behalf of JANE DOE:
$3,334.83

(Minus $25.00 for Medical Narrative)

TOTAL - JANE DOE $10,834.83

FOR JOHN DOE:

On account of State Farm
$2,250.00

On account of the Oklahoma Property & Casualty Insurance Guaranty Association
$5,602.00

1. Additional court costs associated with the filing of the friendly suit may be deducted from this sum due to Sara Maisano.
**TOTAL - JOHN DOE**

$ 7,852.00

In Full Settlement of All Claims and Insurance Coverage  $18,686.83

**TOTAL**  $18,686.83

To **SALEM LAW OFFICES:**

To **SALEM LAW OFFICE** - Advanced Expenses  

$ 25.00

(25% Contingency) - Attorneys Fees  

$ 6,237.27

**TOTAL**  $6,262.27

**TOTAL DISBURSEMENTS**  

$24,949.10

Party Initials  _______  _______

April 14, 1999
Page 3

I, whether jointly or individually, acknowledge settlement regarding the sums due herein and consent to the disbursement of the sums listed to pay attorneys fees, court costs, expenses and advanced costs, if any. I acknowledge that these sums constitute a complete and total settlement for any right, claim or cause of action arising out of the incident for which this payment is made including all claims and counterclaims whether arising out of any litigation or potential litigation.

I acknowledge receipt of copies of documents relating to this disbursement including the following:

1. **Copies** of the above listed Checks.
2. Letter dated December 2, 1996 from Micheal Salem;
3. Original of this Disbursement Statement.

I accept this settlement and am satisfied with the negotiation and settlement of this case. I also acknowledge that payment will be made in the form of a check or draft which may need to be deposited and accepted after receipt of any Release or Settlement Agreement. If not disbursed directly at this time, my attorney is specifically authorized to endorse any such check or draft with my name and to make disbursement upon funding of the draft or check in accordance with the specifications herein.

I further understand that this disbursement involves sums due for a minor child and that portions of the sums have been paid without benefit of a suit or other court supervision. I indemnify Micheal Salem for any such sums received by me on behalf of any minor child herein and acknowledge that such sums are received in trust for the benefit of the minor child and release and indemnify Micheal Salem for any distribution.

Party Initials  _______  _______

April 14, 1999
Page 4

Signature:

**JOHN DOE** Individually, and as parent of JANE DOE, on behalf of JANE DOE and indemnifying Micheal Salem as against any claim of JANE DOE

Signature:

**MARY DOE** Spouse of JOHN DOE and with regard to any separate claim individually and as parent of JANE DOE, on behalf of JANE DOE and indemnifying Micheal Salem as against any claim of JANE DOE
AGREEMENT FOR REPRESENTATION IN
CIVIL RIGHTS CASE

The undersigned,

JOHN DOE and JANE DOE,

(hereinafter referred to as CLIENT whether collective or singular), hereby employs JIM DOE and MICHEAL SALEM, A PROFESSIONAL CORPORATION (hereinafter referred to collectively as ATTORNEY), for the purpose of representation of CLIENT, in the following captioned matter(s):

Suit against County officials in the County Sheriff’s office and others for removal of property of clients without judicial process resulting in denial of due process of law;

ATTORNEY accepts employment and will represent CLIENT in the above captioned case only upon the terms and conditions herein:

1. FEE FOR SERVICES. In consideration of ATTORNEY’s services in the prosecution or defense of this matter, CLIENT herein agree to pay the following sums:

The greater of:

The entire fee awarded or settled under the Civil Rights Fees Act, 42 U.S.C. §1988, and all other attorneys fees and all costs and expenses to the extent that they reimburse any of the total expenses expended by attorney, whether awarded or settled under the Fees Act, Federal Rules, Federal Statutes, state law, or otherwise, if any,

or

One-Half of the total recovery (including all sums awarded by the court or settled, exclusive of costs and expenses);

or if no fee is awarded under any fee shifting provision of federal or state law, then the attorneys fee shall be one-half of the total damages or sums awarded in addition to any advanced costs and expenses.

This is a fee contingent upon recovery by judgment, settlement or otherwise. If ATTORNEY is not successful, CLIENT will owe ATTORNEY nothing except for the full required reimbursement of all out-of-pocket costs and expenses incurred in this lawsuit.

2. COSTS, EXPENSES AND WITNESS FEES. In addition to the attorney fee herein, CLIENT will pay in advance all costs and expenses of this action, including court costs, fees for court services, expenses for the transcription of court proceedings, expert witnesses, Westlaw legal research, associate counsel, travel expenses, lodging outside of Norman, investigators, photocopying charges, telephone charges, and postage. Generally, except for normal and customary fees such as court costs or other routine expenses, ATTORNEY will consult with CLIENT prior to any substantial or extraordinary expenditure related to this litigation. Employment of any associate counsel, investigators or expert witnesses will be at the sole discretion of ATTORNEY and they will report only to ATTORNEY. Attorney will consult with CLIENT prior to any such employment. Costs, expenses and witness fees, as defined herein, shall be advanced by CLIENT prior to their expenditure or disbursed by CLIENT to the appropriate provider at direction of ATTORNEY. ATTORNEY shall have no obligation to advance any expenditures on behalf of CLIENT. Client acknowledges that the fee for any expert witness employed for use in this action may not reimbursed as a court costs or expense and that client may be liable for such fee without reimbursement even though this litigation is successful.

3. OFFERS OF SETTLEMENT. Recognizing that certain offers of settlement which combine attorneys fees, expenses and damages in a single offer (including offers made pursuant to Rule 68 of the Federal Rules of Civil Procedure) can place ATTORNEY and CLIENT in a position of a conflict of interest regarding an appropriate division of fees, expenses and damages as between the parties, it is agreed in advance between the ATTORNEY and CLIENT that in order to avoid such conflicts that all such single offers which combine damages, fees,
costs and expenses due for attorneys fees shall be rejected. Additionally, in the event that this agreement encompasses multiple parties as plaintiffs, it is agreed that in the event a single recovery is obtained by judgment or settlement for all parties remaining in the suit and any such judgment or settlement does not provide for a division of the recovery among Plaintiffs, the settlement shall be equally divided among the remaining parties unless a different division is agreed to by the parties.

4. SOLE REPRESENTATION IN THIS PROCEEDING AND EXCLUDING APPEAL. This Agreement does not cover any representation in other matters or proceedings such as administrative hearings (except administrative proceedings that may be a part of this proceeding), other civil actions or any other criminal or juvenile proceedings. This Agreement also does not constitute an agreement by ATTORNEY for the representation on appeal except by attorney’s separate determination after concluding the trial proceedings.

5. FAVORABLE OUTCOME NOT WARRANTED. ATTORNEY makes no warranties regarding successful termination of this matter or guarantees any particular outcome. All discussions or expressions related thereto are matters of the ATTORNEY’S opinion only.

6. SETTLEMENT AUTHORITY AND LIEN. ATTORNEY will make no settlement without first consulting CLIENT and obtaining CLIENT'S approval. This firm shall have an attorney’s lien from any recovery received including any settlement CLIENT undertakes or obtains on CLIENT'S own behalf or by substitution of counsel for payment of all attorneys fees to which ATTORNEY shall be entitled and all costs and expenses advanced.

7. POWER OF ATTORNEY. If this is a case in which there is a damage or fee recovery as opposed to declaratory judgment or injunctive relief, CLIENT authorizes ATTORNEY to receive the proceeds of any settlement or payment of any judgment and to endorse any draft, check or settlement payment on CLIENT'S behalf, to deduct from the proceeds any fees, costs or expenses due or advanced by ATTORNEY and to disburse the balance of such proceeds to CLIENT. In the event that ATTORNEY has employed any expert witnesses or there are other outstanding medical bills or other expenses related to the litigation or original incident out of which litigation arose, ATTORNEY shall be entitled to deduct any such bill or expense from CLIENT'S portion and pay all such providers directly upon disbursement of the proceeds of judgment or settlement.

8. PROMPT PAYMENT. Prompt and regular payment of all sums due ATTORNEY, including all fees, costs, witness fees and expenses is a material part of this Agreement. Failure of CLIENT to promptly pay any such sums or retainers, when due, shall be grounds for withdrawal from representation by ATTORNEY.

9. TRUTHFUL REPRESENTATIONS OF CLIENT. CLIENT represents that all statements and representations between ATTORNEY and CLIENT regarding all matters relating to any issue of ATTORNEY’S representation or the subject matter of these proceedings are truthful and accurate. In the event CLIENT'S statements and representations are not truthful and accurate, ATTORNEY shall be entitled to withdraw from representation and refund the unused portion of any fee or expense, if any, except any amount subject to any minimum fee provision herein.

10. CLIENT’S ADDRESS AND PHONE NUMBER. CLIENT will keep ATTORNEY advised of current address and telephone number. CLIENT will also immediately contact ATTORNEY if CLIENT is directly contacted by anyone on behalf of or from the opposing party in this matter.

11. PERSONAL SERVICES. This Agreement shall be construed as a contract for personal services.

12. GOVERNING LAW. The laws of the State of Oklahoma shall govern the construction and interpretation of this Agreement.

DATED: April 15, 1999

BEFORE YOU SIGN, PLEASE READ THIS CONTRACT AND THE ENCLOSED LETTER
AGREEMENT FOR REPRESENTATION IN A CRIMINAL CASE

The undersigned, JOHN DOE, (hereinafter referred to as CLIENT), hereby employs MICHEAL SALEM, A PROFESSIONAL CORPORATION (hereinafter referred to as ATTORNEY), for the purpose of representation of CLIENT, in the following captioned matter(s):

Re: State of Oklahoma v. JOHN DOE, No. CM-00-1234-R, DC Cleveland County, Oklahoma: Count I - Driving While Impaired (47 Okla. Stat §761); Count II - Unlawful Possession of Marijuana (63 Okla. Stat. 2-402(B-2)); Count III- Unlawful Possession of Paraphernalia (63 Okla. Stat. §2-405(B)); Count IV- Possession of 3.2 Beer by Person Under 21 years of age (37 Okla. Stat. §246(A); DPS Citation Number 98-488843.

ATTORNEY accepts employment and will represent and defend CLIENT against the captioned criminal charges only upon the terms and conditions herein:

1. FEE FOR SERVICES. In consideration of Attorney’s services in the defense of this matter, CLIENT and any GUARANTOR herein agree to pay the following sums:

INITIAL RETAINER $2,000.00
MINIMUM FEE $2,000.00
TOTAL FEE IS BASED ON HOURLY RATE OF $125.00/hr

which are defined and established as follows:

A. INITIAL RETAINER is the minimum nonrefundable fee for services to be paid by CLIENT or any GUARANTOR herein prior to any entry of appearance in any proceeding or any active representation by ATTORNEY of CLIENT. Payment of the initial retainer is a material condition precedent to this agreement. Preliminary investigatory work, research or inquiry on
behalf of attorney prior to payment of Initial Retainer shall not constitute an agreement for representation.

**B. MINIMUM FEE** is the minimum nonrefundable fee for services to be paid by CLIENT or any GUARANTOR herein for representation of CLIENT and regardless of the outcome or disposition of the subject proceedings.

**C. TOTAL FEE** is the total sum to be paid by CLIENT or any GUARANTOR herein for representation of CLIENT and is to be based upon the total time expended in CLIENT’S behalf by ATTORNEY multiplied by the hourly rate of ATTORNEY as provided above. If necessary, upon exhaustion of the initial retainer, or any subsequent retainer, ATTORNEY, at ATTORNEY’S sole option, shall be entitled to request additional retainers as a condition of continued employment or to bill CLIENT on a monthly basis for services rendered.

2. **COSTS, EXPENSES AND WITNESS FEES.** In addition to the Attorney’s Fee herein, CLIENT will pay all costs and expenses of defense of this action, including court costs, fees for court services, expenses for the transcription of court proceedings, expert witnesses, associate counsel, travel expenses, lodging outside of Norman, investigators, photocopying charges, telephone charges, and postage. Employment of any associate counsel, investigators or expert witnesses will be at the sole discretion of ATTORNEY and they will report only to ATTORNEY. Attorney will consult with CLIENT prior to any such employment. Costs, expenses and witness fees, as defined herein, shall be advanced by CLIENT prior to their expenditure or disbursed by CLIENT to the appropriate provider at direction of ATTORNEY. ATTORNEY shall have no obligation to advance any expenditures on behalf of CLIENT.

3. **SOLE REPRESENTATION.** This Agreement does not cover any representation in other matters or proceedings such as administrative hearings (except administrative proceedings that are a part of this proceeding and for which an agreement of representation is reached) civil actions or other unrelated criminal or juvenile proceedings or on appeal. These may be the subject of a separate agreement of the parties.

4. **FAVORABLE OUTCOME NOT WARRANTED.** ATTORNEY makes no warranties regarding successful termination of this matter or guarantees any particular outcome. All discussions or expressions related thereto are matters of the ATTORNEY’S opinion only. CLIENT acknowledges and understands that, if convicted, the range of punishment is set by appropriate statute, ordinance or regulation.

5. **PROMPT PAYMENT.** Prompt and regular payment of all sums due ATTORNEY, including all fees, costs, witness fees and expenses is a material part of this Agreement. Failure of CLIENT to promptly pay any such sums or retainers, when due, shall be grounds for withdrawal from representation by ATTORNEY.

6. **TRUTHFUL REPRESENTATIONS OF CLIENT.** CLIENT represents that all statements and representations between ATTORNEY and CLIENT regarding all matters relating to any issue of ATTORNEY’S representation or the subject matter of these proceedings are truthful and accurate. In the event CLIENT’S statements and representations are not truthful and accurate, ATTORNEY shall be entitled to withdraw from representation and refund the unused portion of the fee, if any.

7. **PERSONAL SERVICES.** This Agreement is a contract for personal services.

8. **GOVERNING LAW.** The laws of the State of Oklahoma shall govern the construction and interpretation of this Agreement.

CLIENT

____________________________________

JOHN DOE

ACCEPTED on behalf of MICHEAL SALEM, A PROFESSIONAL CORPORATION this __________ day of _________________________, 1998.

____________________________________

MICHEAL SALEM
President

GUARANTY AGREEMENT

The undersigned, as GUARANTOR(S), in consideration of the extension of services herein by ATTORNEY on behalf of CLIENT hereby guarantees the payment of fees and sums due herein upon the same terms and conditions therein provided as if a principal to this Agreement thereto.

DATED this __________ day of _________________________, 1998.

____________________________________

SAME DOE
Parent
Guarantor

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

JOHN DOE,

Plaintiff,

- vs -

NO. FD-99-1234

JANE DOE,

Defendant.

APPLICATION TO WITHDRAW AS ATTORNEY OF RECORD

MICHEAL SALEM, Counsel for Plaintiff in the above captioned matter, comes before the court and makes application to withdraw as counsel of record on behalf of the Plaintiff in the above captioned matter. In support of this application, the undersigned would state as follows:

1. The Plaintiff has requested a substitution of counsel. The undersigned understands that NEW ATTORNEY will substitute as counsel of record for Plaintiff.

2. No delay to this proceeding will occur since new counsel is willing to be substituted as attorney of record.

3. The undersigned claims an attorneys lien herein for the balance of any fee incurred to date.

WHEREFORE, premises considered, the undersigned requests leave of this Court to withdraw as counsel of record on behalf of the Plaintiff in the above captioned matter.

Respectfully submitted,

321
IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

JOHN DOE,

Plaintiff,

-vs-

No. FD-92-1234

JANE DOE,

Defendant.

ORDER PERMITTING WITHDRAWAL AS ATTORNEY OF RECORD

This matter is before the Court on this______day of JUNE, 1998, upon the application of Micheal Salem to withdraw as counsel of record on behalf of the plaintiff in the above captioned matter.

The Court being fully advised in the premises finds that under the circumstances, Micheal Salem should be permitted to withdraw as counsel of record and NEW ATTORNEY is substituted as counsel of record for the Plaintiff.

IT IS SO ORDERED!

_______________________________
JUDGE OF THE DISTRICT COURT

Approved:

MICHEAL SALEM

OBA #7876
111 North Peters, Suite 100
Norman, Oklahoma 73069
Attorney for Plaintiff
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument to which this certification is attached was mailed or served on:

NEW ATTORNEY
Attorney at Law
1234 Classen, Suite 123
Oklahoma City, Oklahoma 73106

Mr. JOHN DOE
1234 South Address
Moore, Oklahoma 73160

this______day of June, 1992.

____________________________
MICHEAL SALEM

“ABA Financial Recordkeeping Rule: At its February 1993 Mid-Year Meeting, the ABA House of Delegates overwhelmingly approved a Model Financial Recordkeeping Rule. The rule was sponsored by the ABA Standing Committee on Lawyers’ Responsibility for Client Protection and was uncontroversial. The purpose of the rule is to provide detailed guidance for compliance with Model Rule 1.15. The rule details ten separate categories of records that a lawyer must keep current and retain for five years after termination of a representation. It also contains rules regarding deposits, withdrawals, and bookkeeping for lawyer trust accounts, and provides guidelines for dealing with trust accounts upon the dissolution of a law firm or the sale of a law practice.” S. GILLERS AND R. SIMON, REGULATION OF LAWYERS: STATUTES AND STANDARDS 159 (1997).

MODEL RULE ON FINANCIAL RECORDKEEPING (adopted by the American Bar Association on Feb. 9, 1993)

PREFACE

Rule 1.15 of the Model Rules of Professional Conduct, or its equivalent, requires that lawyers who are entrusted with the property of law clients and third persons in the practice of law must hold that property with the care required of a professional fiduciary. The basis for Rule 1.15 is the lawyer’s fiduciary obligation to safeguard trust property, to segregate it from the lawyer’s own property, and to avoid the appearance of impropriety.

Rule 1.15 specifically requires a lawyer to preserve “complete records” with respect to a law firm’s trust accounts. It also obligates a lawyer to “promptly render a full accounting” for the receipt and distribution of trust property. A violation of Rule 1.15 may subject a lawyer to professional discipline. Rule 1.15 does not, however, provide lawyers or law firms with practical guidance in complying with these fiduciary obligations or in establishing basic accounting control systems for their law practices.

The Model Rule on Financial Recordkeeping is intended to give further definition to the requirements of Rule 1.15. Adapted from existing court rules, it proposes uniform and minimal standards for the maintenance of law firm financial records. These standards should guide lawyers and law firms, particularly those new to the practice of law.
Rule

A. A lawyer who practices in this jurisdiction shall maintain current financial records as provided in this rule, and shall retain the following records for a period of [five years] after termination of the representation:

(1) receipt and disbursement journals containing a record of deposits to and withdrawals from bank accounts which concern or affect the lawyer’s practice of law, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(2) ledger records for all trust accounts required by [Rule 1.15 of the Model Rules of Professional Conduct], showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed;

(3) copies of retainer and compensation agreements with clients [as required by Rule 1.5 of the Model Rules of Professional Conduct];

(4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(5) copies of bills for legal fees and expenses rendered to clients;

(6) copies of records showing disbursements on behalf of clients;

(7) checkbook registers or check stubs, bank statements, records of deposit, and prenumbered canceled checks or their equivalent;

(8) copies of [monthly] trial balances and [quarterly] reconciliations of the lawyer’s trust accounts; and

(9) copies of those portions of clients’ files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them.

B. With respect to trust accounts required by [Rule 1.15 of the Model Rules of Professional Conduct]:

(1) only a lawyer admitted to practice law in this jurisdiction shall be an authorized signatory on the account;

(2) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and

(3) withdrawals shall be made only by check payable to a named payee and not to cash, or by authorized bank transfer.

C. Records required by this rule may be maintained by electronic, photographic, computer or other media provided that they otherwise comply with this rule and provided further that printed copies can be produced. These records shall be located at the lawyer’s principal office in the jurisdiction or in a readily accessible location.

D. Upon dissolution of any partnership of lawyers or of any legal professional corporation, the partners or shareholders shall make appropriate arrangements for the maintenance of the records specified in Paragraph A of this rule.

E. Upon the sale of a law practice, the seller shall make appropriate arrangements for the maintenance of the records specified in Paragraph A of this rule.

Comment

Paragraph A enumerates the basic financial records that a lawyer should maintain with regard to the business and trust accounts of a law firm. These include the standard books of account, and the supporting records which are necessary to safeguard and account for the receipt and disbursement of client funds as required by Rule 1.15 of the Model Rules of Professional Conduct or its equivalent. Consistent with Rule 1.15, this rule proposes that lawyers maintain financial and safekeeping records for a period of five years after termination of each particular legal engagement or representation.

The potential of these records to serve as safeguards is realized only if the procedures set forth in Paragraph A(8) are regularly performed. The trial balance is the sum of balances of each client’s ledger card (or the computerized equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month’s balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks.
and subtracting any deposits not credited by the bank at month’s end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months’ transactions.

Paragraph B enumerates minimal accounting controls for lawyer trust accounts. It also enunciates the requirement that only a lawyer admitted to the practice of law in the jurisdiction be an authorized signatory on a lawyer trust account.

Paragraph C allows the use of alternative media for the maintenance of bookkeeping records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) back-up procedures is essential.

Paragraphs D and E provide for the preservation of a lawyer’s financial records in the event of dissolution or sale of a law practice. ABA Center for Professional Responsibility, Model Rules for Client Protection 4 (1995)

**********

“Model Rule for Trust Account Overdraft Notification. Lawyers are required to maintain client funds in specially designated escrow or trust accounts, according to ABA model Rule of Professional Conduct 1.15(a). In 1988, the ABA House of Delegates approved a Model Rule for Trust Account Overdraft Notification, requiring financial institutions to notify the state lawyer disciplinary agency when an overdraft has occurred in a lawyer's trust or escrow account. This rule is designed to operate as an "early warning" that a lawyer may be engaging in conduct that might injure clients.” ABA Center for Professional Responsibility, Model Rules for Client Protection 4 (1995)

**********

“Model Rule for Payee Notification. In 1991, the ABA House of Delegates approved a Model Rule for Payee Notification that requires insurers to provide written notice to a claimant that payment was delivered to the claimant's lawyer or other representative by draft, check or otherwise. This Model Rule was based on Regulation 64 of the Department of Insurance of the State of New York, 11 NYCRR 216.9, promulgated in 1988, that had proved highly successful in protecting client interests.” ABA Center for Professional Responsibility, Model Rules for Client Protection 4 (1995)

**********

“ABA Random Audit Rule: At its August 1993 Annual Meeting, by the narrow vote of 110 to 105, the ABA House of Delegates approved a Model Rule for the Random Audit of Lawyer Trust Accounts.

Random Audits of Lawyer Trust Accounts

(a) The [Supreme Court] shall approve procedures to randomly select lawyer or law firm trust accounts for audit.

(b) An audit of a lawyer or law firm trust account conducted pursuant to this rule shall be commenced by the issuance of an investigative subpoena to compel the production of records relating to a lawyer's or law firm's trust accounts. The subpoena shall contain a certification that it was issued in compliance with this rule; that the lawyer or law firm was selected at random; and that there exist no grounds to believe that professional misconduct has occurred with respect to the accounts being audited. The subpoena shall be served at least [10] business day before commencement of the audit.

(c) With respect to each audit conducted pursuant to this rule, the examiner shall:

(1) determine whether the lawyer's or law firm's records and accounts are being maintained in accordance with applicable rules of courts; and

(2) employ sampling techniques to examine "selected accounts," unless discrepancies are found which indicate a need for a more detailed audit. "Selected accounts" may include money, securities and other trust assets held by the lawyer or law firm; safe deposit boxes and similar devices; deposit
records' canceled checks or their equivalent; and any other records which pertain to trust transactions affecting the lawyer's or law firm's practice of law.

(d) The examiner shall prepare a written report containing the examiner's findings, a copy of which shall be provided to the audited lawyer or law firm.

(e) In the event that the audit report asserts deficiencies in the audited lawyer's or law firm's records or procedures, the lawyer or law firm shall, within [10] business days after receipt of the report, provide evidence that the alleged deficiencies are incorrect, or that they have been corrected. If corrective action requires additional time, the lawyer or law firm shall apply for an extension of time to a date certain in which to correct the deficiencies cited in the audit report.

(f) All records produced for an audit conducted pursuant to this rule shall remain confidential, and their contents shall not be disclosed in violation of the attorney-client privilege.

(g) Records produced for an audit conducted pursuant to this rule may be disclosed to:

(1) the lawyer disciplinary agency or to a court to the extent disclosure is necessary for the purposes of the particular audit;

(2) the lawyer disciplinary agency for the purposes of a disciplinary proceeding; and

(3) any other person, including a law enforcement agency, with the permission of the Supreme Court.

(h) A lawyer or law firm shall cooperate in an audit conducted pursuant to this rule, and shall answer all questions pertaining thereto, unless the lawyer or law firm claims a privilege or right which is available to the lawyer or law firm under applicable state or federal law. A lawyer's or law firms failure to cooperate in an audit conducted pursuant to this rule shall constitute professional misconduct.

(i) No lawyer or law firm shall be subject to an audit conducted pursuant to this rule more frequently than once every [three] years.” S. GILLERS AND R. SIMON, REGULATION OF LAWYERS: STATUTES AND STANDARDS 160-161 (1997).

Editor's Note: When thinking about fees in Oklahoma, Oklahoma lawyers must also comply with OKLA. STAT. tit. 5, § 7 which reads:

It shall be lawful for an attorney to contract for a percentage or portion of the proceeds of a client's cause of action or claim not to exceed fifty (50%) per centum of the net amount of such judgment as may be recovered, or such compromise as may be made, whether the same arises ex contractu or ex delicto, and no compromise or settlement entered into by a client without such attorney's consent shall affect or abrogate the lien provided for in this chapter (Okla. Stat. tit. 5, § 8). Provided that all such contracts in personal injury or wrongful death cases including, but not restricted to, cases in which jurisdiction is in the Industrial Commission, shall be void and unenforceable (1) if secured as a result of the intervention of any laymen, association, or corporation for compensation, or promise of compensation, or anticipation of gift, compensation or hope of reward, or (2) where any laymen, association or corporation has a direct or indirect interest in, or growing out of, any judgment arising out of such claim recovery or compensation from, or settlement of, any such claim.