PROFESSIONAL RULES

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PREAMBLE: A LAWYER'S RESPONSIBILITIES

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

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As evaluator, a lawyer examines a client's legal affairs and reports 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 the representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

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

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients,

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

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

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

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from the conflict between a lawyer's responsibilities to clients, the legal system and 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 to zealously protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

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

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

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing observance of these rules 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 either not to act or to act 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. For example, Minnesota's Professionalism Aspirations provide guidance on best practices in situations typical in the practice of law. 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 discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

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

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

TEXT OF RULES

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 (f) 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) "Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(d) "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.

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

(f) "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.

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

(h) "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.

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

(j) "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.

(k) "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.

(l) "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.

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

(n) "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.

(o) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and electronic communications. 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.

(Amended effective October 1, 2005; amended effective April 1, 2015.)

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 (d) 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 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 term "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(b), 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 (o) 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 (o).

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 Rule 1.10, 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 information, including information in electronic form, 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 information, including information in electronic form, 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).

Retaining or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, 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 a jury trial and whether the client will testify.

(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.

(Amended effective October 1, 2005.)

Comment

Allocation of Authority Between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

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

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

[4] In a case in which the client appears to be suffering from 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 does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The objectives or 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.

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

Criminal, Fraudulent and Prohibited Transactions

[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. I 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 regardless of whether 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 work load must be controlled so that each matter can be handled competently.

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

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

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

Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).

Rule 1.4 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(f), 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.

(Amended effective October 1, 2005.)

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. A lawyer should promptly respond to or acknowledge client communications.

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 might or 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(f).

[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. Except as provided below, fee payments received by a lawyer before legal services have been rendered are presumed to be unearned and shall be held in a trust account pursuant to Rule 1.15.

(1) A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for those services and may be paid in whole or in part in advance of the lawyer providing the services. If agreed to in advance in a written fee agreement signed by the client, a flat fee shall be considered to be the lawyer's property upon payment of the fee, subject to refund as described in Rule 1.5(b)(3). Such a written fee agreement shall notify the client:

(i) of the nature and scope of the services to be provided;

(ii) of the total amount of the fee and the terms of payment;

(iii) that the fee will not be held in a trust account until earned;

(iv) that the client has the right to terminate the client-lawyer relationship; and

(v) that the client will be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided.

(2) A lawyer may charge a fee to ensure the lawyer's availability to the client during a specified period or on a specified matter in addition to and apart from any compensation for legal services performed. Such an availability fee shall be reasonable in amount and communicated in a writing signed by the client. The writing shall clearly state that the fee is for availability only and that fees for legal services will be charged separately. An availability fee may be considered to be the lawyer's property upon payment of the fee, subject to refund in whole or in part should the lawyer not be available as promised.

(3) Fee agreements may not describe any fee as nonrefundable or earned upon receipt but may describe the advance fee payment as the lawyer's property subject to refund. Whenever a client has paid a flat fee or an availability fee pursuant to Rule 1.5(b)(1) or (2) and the lawyer-client relationship is terminated before the fee is fully earned, the lawyer shall refund to the client the unearned portion of the fee. If a client disputes the amount of the fee that has been earned, the lawyer shall take reasonable and prompt action to resolve the dispute.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The

agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

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

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

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

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

(Amended effective October 1, 2005; amended effective July 1, 2011.)

Comment

Reasonableness of Fee and Expenses

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

Basis or Rate of Fee

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

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

Terms of Payment

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

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

Prohibited Contingent Fees

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

Division of Fee

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

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

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. The 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) Except when permitted under paragraph (b), a lawyer shall not knowingly reveal information relating to the representation of a client.

(b) A lawyer may reveal information relating to the representation of a client if:

(1) the client gives informed consent;

(2) the information is not protected by the attorney-client privilege under applicable law, the client has not requested that the information be held inviolate, and the lawyer reasonably believes the disclosure would not be embarrassing or likely detrimental to the client;

(3) the lawyer reasonably believes the disclosure is impliedly authorized in order to carry out the representation;

(4) the lawyer reasonably believes the disclosure is necessary to prevent the commission of 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 or to prevent the commission of a crime;

(5) the lawyer reasonably believes the disclosure is necessary to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services were used;

(6) the lawyer reasonably believes the disclosure is necessary to prevent reasonably certain death or substantial bodily harm;

(7) the lawyer reasonably believes the disclosure is necessary to secure legal advice about the lawyer's compliance with these rules;

(8) the lawyer reasonably believes the disclosure is necessary to establish a claim or defense on behalf of the lawyer in an actual or potential controversy between the lawyer and the client, to establish a defense in a civil, criminal, or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond in any proceeding to allegations by the client concerning the lawyer's representation of the client;

(9) the lawyer reasonably believes the disclosure is necessary to comply with other law or a court order;

(10) the lawyer reasonably believes the disclosure is necessary to inform the Office of Lawyers Professional Responsibility of knowledge of another lawyer's 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. See Rule 8.3; or

(11) the lawyer reasonably believes the disclosure is necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

(Amended effective January 1, 1990; amended April 14, 1992, effective June 1, 1992; amended effective October 1, 2005; amended effective April 1, 2015.)

Comment

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

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

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

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

Authorized Disclosure

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

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(6) 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 or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

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

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

[9] A lawyer entitled to a fee is permitted by paragraph (b)(8) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[10] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this rule and requires disclosure, paragraph (b)(9) permits the lawyer to make such disclosures as are necessary to comply with the law.

[11] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(9) permits the lawyer to comply with the court's order.

Detection of Conflicts of Interest

[12] Paragraph (b)(11) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a

lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [2]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of a divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[13] Any information disclosed pursuant to paragraph (b)(11) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(11) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(11). Paragraph (b)(11) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[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)(11). In exercising the discretion converted 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 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this rule. See Rule 3.3(c).

Withdrawal

[16] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise permitted in Rule 1.6. Neither this rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or

disaffirm any opinion, document, affirmation, or the like. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

Acting Competently to Preserve Confidentiality

[17] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and 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. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].

[18] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Former Client

[19] 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.

(Amended effective October 1, 2005.)

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(f) 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 nonlitigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

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

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

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

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

Identifying Conflicts of Interest: Material Limitation

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

Lawyer's Responsibilities to Former Clients and Other Third Persons

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

Personal Interest Conflicts

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

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising form a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

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

Interest of Person Paying for a Lawyer's Service

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

Prohibited Representations

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

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if under 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.

[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(n)), 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(f) (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(o) (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 to the client's own representation 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 noncensentable under paragraph (b).

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatability 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 both criminal and civil cases. The potential for conflict of interest in representation of multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interest is proper if the risk of adverse effect is minimal and 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 under Rule 1.7(a)(2) the lawyer's effectiveness in representing another client in a different case.

[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 to the parties involved. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, the lawyer may help 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 under take 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 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 document signed by the client separate from the transaction documents, 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 prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(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;

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

(3) a lawyer may guarantee a loan reasonably needed to enable the client to withstand delay in litigation that would otherwise put substantial pressure on the client to settle a case because of financial hardship rather than on the merits, provided the client remains ultimately liable for repayment of the loan without regard to the outcome of the litigation and, further provided, that no promise of such financial assistance was made to the client by the lawyer, or by another in the lawyer's behalf, prior to the employment of that lawyer by that 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 or the acceptance of compensation from another is impliedly authorized by the nature of the representation;

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

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

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients 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 involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

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

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

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

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

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

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

(1) "sexual relations" means sexual intercourse or any other intentional touching of the intimate parts of a person or causing the person to touch the intimate parts of the lawyer;

(2) if the client is an organization, any individual who oversees the representation and gives instructions to the lawyer on behalf of the organization shall be deemed to be the client; in-house attorneys while representing governmental or corporate entities are governed by Rule 1.7 rather than by this rule with respect to sexual relations with other employees of the entity they represent;

(3) this paragraph does not prohibit a lawyer from engaging in sexual relations with a client of the lawyer's firm provided that the lawyer has no involvement in the performance of the legal work for the client;

(4) if a party other than the client alleges violation of this paragraph, and the complaint is not summarily dismissed, the Director of the Office of Lawyers Professional Responsibility, in determining whether to investigate the allegation and whether to charge any violation based on the allegations, shall consider the client's statement regarding whether the client would be unduly burdened by the investigation or charge.

(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.

(Amended effective July 1, 1994; amended effective for all lawyer conduct occurring on or after August 1, 1999; amended effective October 1, 2005.)

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 than 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 document signed by the client separate from the transaction documents, 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(f) (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. 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 brought on behalf of their clients, such as by making 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. A lawyer may guarantee a loan to enable the client to withstand delay in litigation under the circumstances stated in Rule 1.8(e)(3).

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, or acceptance of compensation from another is impliedly authorized by the nature of the representation. 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), 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. The rule stated in this paragraph is a corollary of both these rules and provides that, before any settlement offer 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 is accepted. See also Rule 1.0(f) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

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

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness

of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

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

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikley 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 from having a sexual relationship with a person who oversees the representation and gives instructions to the lawyer on behalf of the organization.

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer.

For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

Rule 1.9 Duties to Former Clients

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

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) unless the former client gives informed consent, confirmed in writing.

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

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

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

(Amended effective October 1, 2005.)

Comment

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

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

[3] Matters are "substantially related" for purposes of this rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

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

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

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no

other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

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

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

[9] The provisions of this rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(f). 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 Rule 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer becomes associated with a firm, and the lawyer is prohibited from representing a client pursuant to Rule 1.9(b), other lawyers in the firm may represent that client if there is no reasonably apparent risk that confidential information of the previously represented client will be used with material adverse effect on that client because:

(1) any confidential information communicated to the lawyer is unlikely to be significant in the subsequent matter;

(2) the lawyer is subject to screening measures adequate to prevent disclosure of the confidential information and to prevent involvement by that lawyer in the representation; and

(3) timely and adequate notice of the screening has been provided to all affected clients.

(c) 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.

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

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

(Amended effective for all lawyer conduct occurring on or after August 1, 1999; amended effective October 1, 2005.)

Comment

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(d). 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) and (c).

[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 that 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(1) and 5.3.

[5] Rule 1.10(c) 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(d) 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(f).

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

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

Rule 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees

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

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

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

(2) shall not:

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

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

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

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

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

(Amended effective October 1, 2005.)

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(f) for the definition of informed consent. It is generally improper for a county attorney to accept the defense of a criminal case in another county, and for a city attorney to accept a criminal case that arises within the boundaries of the city or municipality that he or she represents. In extraordinary circumstances, where the accused would otherwise be deprived of competent counsel, a county attorney may seek to represent a client accused of a crime in another county by obtaining permission from the court before which the matter will be tried. The disqualification of county and city attorneys is only imputed to those lawyers in the county or city attorney's law firm who actually participate in representing the county or the city.

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

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized

to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

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

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

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

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

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

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

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

Rule 1.12 Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative

officer or law clerk to such a person, or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

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

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

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

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

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

(Amended effective October 1, 2005.)

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 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. Paragraphs C(2), D(2), and E(2) of the Application section 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 a proceeding in which the judge 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(f) 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(l). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior

independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

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

Rule 1.13 Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessarily 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) If, 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 the law, the lawyer may resign in accordance with Rule 1.16 and may disclose information in conformance with Rule 1.6.

(d) 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 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.

(e) 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.

(f) 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.

(Amended effective October 1, 2005.)

Comment

The Entity as the Client

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

means the positions equivalent to officers, directors, employees, and shareholders held by persons acting for organizational clients that are not corporations.

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

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

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. 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 that matter; 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 a 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 organization client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

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

Relation to Other Rules

[6] The authority and responsibility provided in this rule are concurrent with the authority and responsibility provided in other rules. In particular, this rule does not limit or expand the lawyer's

responsibility under Rules 1.6, 1.8, 1.16 , 3.3, or 4.1. Paragraph (c) of this rule does not modify, restrict, or limit the provisions of Rule 1.6(b). Under paragraph (c), the lawyer may reveal confidential 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. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rule 1.6(b) may permit the lawyer to disclose confidential information. In such circumstances Rule 1.2(d) may also be applicable, in which event withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] 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

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

Clarifying the Lawyer's Role

[9] 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.

[10] 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

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

Derivative Actions

[12] 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.

[13] 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 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 protective action, including consulting 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(v)(3) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

(Amended effective October 1, 2005.)

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 an impairment does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

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

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(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 decisionmaking tools, such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies, or other individuals or entities that have the availability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing client capacities, and respecting the client's family and social connections.

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

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

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question 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 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 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 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 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) All funds of clients or third persons held by a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts as set forth in paragraphs (d) through (g) and as defined in paragraph (o). No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds of the lawyer or law firm reasonably sufficient to pay service charges may be deposited therein;

(2) funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm must be deposited therein.

(b) A lawyer must withdraw earned fees and any other funds belonging to the lawyer or the law firm from the trust account within a reasonable time after the fees have been earned or entitlement to the funds has been established and the lawyer must provide the client or third person with: (i) written notice of the time, amount, and purpose of the withdrawal; and (ii) an accounting of the client's or third person's funds in the trust account. If the right of the lawyer or law firm to receive

funds from the account is disputed by the client or third person claiming entitlement to the funds, the disputed portion shall not be withdrawn until the dispute is finally resolved. If the right of the lawyer or law firm to receive funds from the account is disputed within a reasonable time after the funds have been withdrawn, the disputed portion must be restored to the account until the dispute is resolved.

(c) A lawyer shall:

(1) promptly notify a client or third person of the receipt of the client's or third person's funds, securities, or other properties;

(2) identify and label securities and properties of a client or third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them;

(4) promptly pay or deliver to the client or third person as requested the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive; and

(5) except as specified in Rule 1.5(b)(1) and (2), deposit all fees received in advance of the legal services being performed into a trust account and withdraw the fees as earned.

(d) Each trust account referred to in paragraph (a) shall be an account in an eligible financial institution selected by a lawyer in the exercise of ordinary prudence.

(e) A lawyer who receives client or third person funds shall maintain a pooled trust account ("IOLTA account") for deposit of funds that are nominal in amount or expected to be held for a short period of time.

(f) All client or third person funds shall be deposited in the account specified in paragraph (e) unless they are deposited in a:

(1) separate trust account for the particular third person, client, or client's matter on which the earnings, net of any transaction costs, will be paid to the client or third person; or

(2) pooled trust account with subaccounting which will provide for computation of earnings accrued on each client's or third person's funds and the payment thereof, net of any transaction costs, to the client.

(g) In determining whether to use the account specified in paragraph (e) or an account specified in paragraph (f), a lawyer shall take into consideration the following factors:

(1) the amount of earnings which the funds would accrue during the period they are expected to be deposited;

(2) the cost of establishing and administering the account, including the cost of the lawyer's services;

(3) the capability of financial institutions described in paragraph (d) to calculate and pay earnings to individual clients.

Only funds that could not accrue earnings for the client, net of the costs described in subparagraph (2) above, may be placed or retained in the account specified in paragraph (e).

(h) Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis, books and records sufficient to demonstrate income derived from, and expenses related to, the lawyer's private practice of law, and to establish compliance with paragraphs (a) through (f). Equivalent books and records demonstrating the same information in an easily accessible manner and in substantially the same detail are acceptable. The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to books and records relating to funds or property of clients or third persons, for at least six years after completion of the employment to which they relate.

(i) Every lawyer subject to paragraph (h) shall certify, in connection with the annual renewal of the lawyer's registration and in such form as the Lawyer Registration Office may prescribe, that the lawyer or the lawyer's law firm maintains books and records as required by paragraph (h). The Lawyers Professional Responsibility Board shall publish annually the books and records required by paragraph (h)

(j) Lawyer trust accounts, including IOLTA accounts, shall be maintained only in eligible financial institutions approved by the Office of Lawyers Professional Responsibility. Every check, draft, electronic transfer, or other withdrawal instrument or authorization shall be personally signed or, in the case of electronic, telephone, or wire transfer, directed by one or more lawyers authorized by the law firm.

(k) A financial institution, to be approved as a depository for lawyer trust accounts, must file with the Office of Lawyers Professional Responsibility an agreement, in a 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 the instrument is honored. The Lawyers Professional Responsibility Board shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon three days' notice in writing to the Office.

(l) The overdraft notification 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 an instrument that is presented against insufficient funds but which instrument is 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.

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 banking days of the date of presentation for payment against insufficient funds.

(m) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively 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 report and records required by this rule.

(o) Definitions. "Trust account" is an account denominated as such in which a lawyer or law firm holds funds on behalf of a client or third person(s) and is: (1) an interest-bearing checking account; (2) a money market account with or tied to check-writing; (3) a sweep account, which is a money market fund or daily overnight financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or (4) an open-end money market fund solely invested in or fully collateralized by U.S. Government Securities. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Act of 1940, and, at the time of the investment, have total assets of at least $250,000,000. "U.S. Government Securities" refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. A daily overnight financial institution repurchase agreement may be established only with an institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations.

"IOLTA account" is a pooled trust account in an eligible financial institution that has agreed to:

(1) remit the earnings accruing on this account, net of any allowable reasonable fees, monthly to the IOLTA program as established by the Minnesota Supreme Court;

(2) transmit with each remittance a report that shall identify each lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of earnings applied, the amount of earnings accrued, the amount and type of fees deducted, if any, and the average account balance for the period in which the report is made; and

(3) transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

An approved eligible financial institution must pay no less on IOLTA accounts than (i) the highest earnings rate generally available from the institution to its non-IOLTA customers on each IOLTA account that meets the same minimum balance or other eligibility qualifications, or (ii) 80 percent of the Federal Funds Target Rate on all its IOLTA accounts. The rate to be paid shall be fixed on the first day of each month, subject to rate changes during the month reflected in normal month-end calculations. Accrued earnings and fees shall be calculated in accordance with the eligible financial institution's standard practice, but institutions may elect to pay a higher earnings rate and may elect to waive any fees on IOLTA accounts. A financial institution may choose to pay the higher sweep or money market account rates on a qualifying IOLTA checking account.

"Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, sweep fees, and similar charges assessed against comparable accounts by the eligible financial institution. All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA accounts.

"Eligible financial institution" for trust accounts is a bank or savings and loan association authorized by federal or state law to do business in Minnesota, the deposits of which are insured by an agency of the federal government, or is an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Minnesota.

"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 an eligible financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.

(Amended effective January 1, 1990; amended effective for all lawyer conduct occurring on or after August 1, 1999; amended effective October 1, 2005; amended effective July 1, 2007; amended effective July 1, 2010; amended effective July 1, 2011; amended effective July 1, 2018.)

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.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (a)(1) 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 is the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

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

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

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 fees or expenses that has not been earned or incurred.

(e) Papers and property to which the client is entitled include the following, whether stored electronically or otherwise:

(1) in all representations, the papers and property delivered to the lawyer by or on behalf of the client and the papers and property for which the client has paid the lawyer's fees and reimbursed the lawyer's costs;

(2) in pending claims or litigation representations:

(i) all pleadings, motions, discovery, memoranda, correspondence and other litigation materials which have been drafted and served or filed, regardless of whether the client has paid the lawyer for drafting and serving the document(s), but shall not include pleadings, discovery, motion papers, memoranda and correspondence which have been drafted, but not served or filed if the client has not paid the lawyer's fee for drafting or creating the documents; and

(ii) all items for which the lawyer has agreed to advance costs and expenses regardless of whether the client has reimbursed the lawyer for the costs and expenses including depositions, expert opinions and statements, business records, witness statements, and other materials that may have evidentiary value;

(3) in nonlitigation or transactional representations, client files, papers, and property shall not include drafted but unexecuted estate plans, title opinions, articles of incorporation, contracts, partnership agreements, or any other unexecuted document which does not otherwise have legal effect, where the client has not paid the lawyer's fee for drafting the document(s).

(f) A lawyer may charge a client for the reasonable costs of duplicating or retrieving the client's papers and property after termination of the representation only if the client has, prior to termination of the lawyer's services, agreed in writing to such a charge.

(g) A lawyer shall not condition the return of client papers and property on payment of the lawyer's fee or the cost of copying the files or papers.

(Amended effective October 1, 2005.)

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

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably

believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

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

Rule 1.17 Sale of Law Practice

(a) A lawyer shall not sell or buy a law practice unless:

(1) the seller sells the practice as an entirety, as defined in paragraph (c) of this rule, to a lawyer or firm of lawyers licensed to practice law in Minnesota; and

(2) the seller sends a written notification that complies with paragraph (d) of this rule to all clients whose files are currently active and all clients whose inactive files will be taken over by the buying lawyer or firm of lawyers.

(b) The buying lawyer or firm of lawyers shall not increase the fees charged to clients by reason of the sale for a period of at least one year from the date of the sale. The buying lawyer or firm of lawyers shall honor all existing fee agreements for at least one year from the date of the sale and shall continue to completion, on the same terms agreed to by the selling lawyer and the client, any matters that the selling lawyer has agreed to do on a basis or for a reduced fee.

(c) For purposes of this rule, a practice is sold as an entirety if the buying lawyer or firm of lawyers assumes responsibility for at least all of the currently active files except those that deal with matters that the buying lawyer or firm of lawyers would not be competent to handle, those that the buying lawyer or firm of lawyers would be barred from handling because of a conflict of interest, or those from which the selling lawyer is denied permission to withdraw by a tribunal in a matter subject to Rule 1.16(c).

(d) The written notification that the selling lawyer must send pursuant to paragraph (a)(2) of this rule must include at a minimum:

(1) a statement that the law practice of the selling lawyer has been sold to the buying lawyer or law firm;

(2) a summary of the buying lawyer's or law firm's professional background, including education and experience and the length of time that the buying lawyer or members of the buying law firm have been in practice;

(3) a statement that the client has the right to continue to retain the buying lawyer under the same fee arrangement as the client had with the selling lawyer or to have the client's complete file sent to the client or to another lawyer of the client's choice.

(e) If the written notification described in paragraph (d) has actually reached the client through personal service or by certified mail, the notification may include a provision stating that if the client does not respond to the buying lawyer by ninety days from the date that the client receives the notification, the client's silence shall be deemed to be the client's waiver of confidentiality and the client's consent to the buying lawyer representing the client in the matter that was the subject of the selling lawyer's representation. The client's failure to respond within that time shall be such a waiver and consent.

(f) The transaction may include a promise by the selling lawyer that the selling lawyer will not engage in the practice of law for a reasonable period of time within a reasonable geographic area and will not advertise for or solicit clients within that area for that time.

(g) The selling lawyer shall retain responsibility for the proper management and disposition of all inactive files that are not transferred as part of the sale of the law practice.

(h) For purposes of this Rule, the term "lawyer" means an individual lawyer or a law firm that buys or sells a law practice.

(Added effective January 1, 1996; amended effective October 1, 2005.)

Comment

[1] A representative of a deceased, disabled or disappeared lawyer may sell the lawyer's law practice under the same restrictions as imposed by this rule. See Rule 5.4(a)(4).

[2] Rule 1.6(b)(11) on Confidentiality of Information permits disclosure of information necessary to detect and resolve conflicts of interest arising from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client. Within these limits a selling lawyer may disclose to the potential buying lawyer such information necessary for the buying lawyer to detect and resolve conflicts of interest that may arise as a result of the transfer of ownership. Disclosure of information beyond that authorized by Rule 1.6(b)(11) will require the selling lawyer to obtain from the affected client a waiver of confidentiality.

[3] The selling lawyer should consider extending malpractice insurance for some reasonable period of time following the sale to insure against losses arising from errors that might come to light after the sale.

Rule 1.18 Duties to Prospective Client

(a) A person who consults with a lawyer about 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 consulted with a prospective client shall not use or reveal information obtained 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.

(Added effective October 1, 2005; amended effective April 1, 2015.)

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 consultations 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] A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. Such a person 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, and is thus not a "prospective client." Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."

[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 regard less 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 consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for nonrepresentation 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 a consultation 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(f) 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 against the prospective client 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), 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 all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(l) (requirements for screening procedures). Paragraph (d)(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.

[8] 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. When disclosure is likely to significantly injure the client, a reasonable delay may be justified.

[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 the law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation.

(Amended effective October 1, 2005.)

Comment

Scope of Advice

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

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

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

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Rule 2.2 Intermediary

(Deleted effective October 1, 2005.)

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.

(Amended effective October 1, 2005.)

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 a 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 on behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[4] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstance 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(b)(3). 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(f).

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.

(Added effective October 1, 2005.)

Comment

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

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

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

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

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal,

as in binding arbitration (see Rule 1.0(n)), 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 a defendant in a criminal proceeding, or a 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.

(Amended effective October 1, 2005.)

Comment

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

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

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

Rule 3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment

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

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

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

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

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

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

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

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

(Amended effective October 1, 2005.)

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(n) 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 Comment to Rule 8.4(b).

Legal Argument

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

Offering Evidence

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

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

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. 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 representation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(g). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

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

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during

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

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(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.

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 a 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.

(Amended effective October 1, 2005.)

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.

[3] With regard to paragraph (b), it is not improper to pay a witness' expenses or to compensate an expert witness on terms permitted by law.

[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) Before the trial of a case, a lawyer connected therewith shall not, except in the course of official proceedings, communicate with or cause another to communicate with anyone the lawyer knows to be a member of the venire from which the jury will be selected for the trial of the case.

(b) During the trial of the case:

(1) a lawyer connected therewith shall not, except in the course of official proceedings, communicate with or cause another to communicate with any member of the jury.

(2) a lawyer who is not connected therewith shall not, except in the course of official proceedings, communicate with or cause another to communicate with a juror concerning the case.

(c) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.

(d) A lawyer shall not conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a juror or prospective juror.

(e) All restrictions imposed by this rule apply also to communications with or investigations of members of a family of a juror or prospective juror.

(f) A lawyer shall reveal promptly to the court improper conduct by, or by another toward, a juror or prospective juror or a member of the family thereof, of which the lawyer has knowledge.

(g) In an adversary proceeding a lawyer shall not communicate or cause another to communicate as to the merits of the case with the judge or an official before whom a proceeding is pending except:

(1) in the course of official proceedings;

(2) in writing, if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if the party is not represented by a lawyer;

(3) orally upon adequate notice to opposing counsel or to the adverse party if the adverse party is not represented by a lawyer; or

(4) as otherwise authorized by law.

(h) A lawyer shall not engage in conduct intended to disrupt a tribunal.

(Amended October 1, 2005.)

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] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge

but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can prevent the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

Rule 3.6 Trial Publicity

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

(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).

(Amended effective October 1, 2005.)

Comment

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

[2] The rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing a pending criminal jury trial. 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.

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

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

Rule 3.7 Lawyer as Witness

(a) A lawyer shall not act as an 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 an 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.

(Amended effective October 1, 2005.)

Comment

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

Advocate-Witness Rule

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

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

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

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

Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rule 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(f) for the definition of "informed consent."

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

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

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

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

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

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

(f) exercise reasonable care to prevent employees or other persons assisting or associated with the prosecutor in a criminal case and over whom the prosecutor has direct control from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

(Amended effective October 1, 2005.)

Comment

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

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

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

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

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

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case.

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.

(Amended effective October 1, 2005.)

Comment

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts,

formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure. See Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

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

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

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 make a false statement of fact or law.

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.

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.

(Amended to govern all lawyer disciplinary actions commenced on or after January 1, 1995; amended effective October 1, 2005.)

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 uncounselled disclosure of information relating to the representation.

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

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

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

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

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

[7] In the case of a represented organization, this rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. The term "constituent" is defined in Comment [1] to Rule 1.13. 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(g). 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) a lawyer shall not state or imply that the lawyer is disinterested;

(b) a lawyer shall clearly disclose that the client's interests are adverse to the interests of the unrepresented person, if the lawyer knows or reasonably should know that the interests are adverse;

(c) when a 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; and

(d) a lawyer shall not give legal advice to the unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of the unrepresented person are or have a reasonable possibility of being in conflict with the interests of the client.

(Amended effective October 1, 2005.)

Comment

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

[2] The rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents a party whose interests are adverse 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 or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

(Amended effective October 1, 2005; amended effective April 1, 2015.)

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 a document or electronically stored information that was mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronically stored information 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 or deleting the document or electronically stored information, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of a document or electronically stored information 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 inappropriately obtained by the sending person. For purposes of this rule, "document or electronically stored information" includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

[3] Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving it that it was inadvertently sent. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or electronically stored information 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 a Partner or Supervisory Lawyer

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

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer's conduct 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.

(Amended effective October 1, 2005.)

Comment

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

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

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

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

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

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

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

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

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

Rule 5.2 Responsibilities of a Subordinate Lawyer

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

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

Comment

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

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

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

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

(a) a partner and a lawyer, who individually or together with other lawyers possess 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 nonlawyer'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 the conduct of a nonlawyer 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.

(Amended effective October 1, 2005.)

Comment

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of such nonlawyers without or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

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

Nonlawyers Outside the Firm

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer

should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Rule 5.4 Professional Independence of a Lawyer

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

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement;

(4) subject to full disclosure and court approval, a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter; and

(5) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer the proportion of the total compensation that fairly represents the services rendered by the deceased lawyer.

(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 possesses governance authority, unless permitted by the Minnesota Professional Firms Act; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(Amended effective January 1, 1996; amended effective for all lawyer conduct occurring on or after August 1, 1999; amended effective October 1, 2005.)

Comment

[1] The provisions of this rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the

client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] This rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8(f).

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so, except that a lawyer admitted to practice in Minnesota does not violate this rule by conduct in another jurisdiction that is permitted in Minnesota under Rule 5.5(c) and (d) for lawyers not admitted to practice in Minnesota.

(b) A lawyer who is not admitted to practice in Minnesota 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 Minnesota law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice Minnesota law.

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

(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 the 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 involve the representation of a family member or arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. Such reasonably related services include services that are within the lawyer's recognized expertise in an area of law, developed through the regular practice of law in that area in a jurisdiction in which the lawyer is licensed to practice law.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in Minnesota that exclusively involve federal law, tribal law or the law of another jurisdiction in which the lawyer is licensed to practice law, provided the lawyer advises the lawyer's client that the lawyer is not licensed to practice in Minnesota.

(Amended effective October 1, 2005; amended effective July 1, 2019.)

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. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional misconduct in that person's jurisdiction. The exception is intended to permit a Minnesota lawyer, without violating this rule, to engage in practice in another jurisdiction as Rule 5.5(c) and (d) permit a lawyer admitted to practice in another jurisdiction to engage in practice in Minnesota. A lawyer who does so in another jurisdiction in violation of its law or rules may be subject to discipline or other sanctions in that jurisdiction.

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

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

[4] Other than as authorized by law or this rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1 and 7.5(b).

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

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

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia, and any state, territory, or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a

lawyer who while technically admitted is not authorized to practice because, for example, the lawyer is on inactive status.

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

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

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

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

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

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraph (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 either involve the representation of a family member or 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 in an area of law, developed through the regular practice of law on behalf of clients in a jurisdiction in which the lawyer is licensed. For purposes of paragraph (c)(4) of this rule, "family member" means a person related to the lawyer, including by marriage, as a parent, child, sibling, spouse, grandparent or grandchild.

[15] Paragraph (d) identifies 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. Pursuant to paragraph (c) of this rule, a lawyer admitted in any U.S. jurisdiction may also provide legal services in this jurisdiction on a temporary basis. Except as provided in paragraph (d), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d) recognizes that a lawyer who is not licensed in Minnesota may provide legal services in Minnesota if the services exclusively involve federal law, tribal law, or the law of another jurisdiction in which the lawyer is licensed to practice, provided the lawyer specifically advises the client that the lawyer is not licensed to practice law in Minnesota.

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

[18] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraph (c) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, such notice 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).

[19] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services 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, shareholder, 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.

(Amended effective October 1, 2005.)

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 entering into an agreement 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 circumstance 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 which might reasonably be performed in conjunction with and in substance are related to the provision of legal services and which are not prohibited as the unauthorized practice of law when provided by a nonlawyer.

(Added effective October 1, 2005.)

Comment

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

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

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

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

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

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

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

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

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

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

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

Rule 5.8 Employment of Disbarred, Suspended, or Involuntarily Inactive Lawyers

(a) For purposes of this rule "employ" means to engage the services of another, including employees, agents, independent contractors, and consultants, regardless of whether any compensation is paid.

(b) A lawyer shall not employ, associate professionally with, or aid a person the lawyer knows or reasonably should know has been disbarred, suspended, or placed on disability inactive status by order of the court to do any of the following on behalf of the lawyer's client:

(1) render legal consultation or advice to the client;

(2) appear on behalf of the client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer, unless the rules of the tribunal involved permit representation by nonlawyers and the client has been informed of the lawyer's suspension, disbarment, or disability inactive status;

(3) appear as a representative of the client at a deposition or other discovery matter;

(4) negotiate or transact any matter for or on behalf of the client with third parties;

(5) receive, disburse, or otherwise handle the client's funds; or

(6) engage in activities that constitute the practice of law.

(c) A lawyer may employ, associate professionally with, or aid a disbarred, suspended, or disability inactive lawyer to perform research, drafting, clerical, or similar activities, including but not limited to:

(1) performing legal work of a preparatory nature for the active lawyer's review, such as legal research, gathering information, and drafting pleadings, briefs, and other similar documents;

(2) directly communicating with the client or third parties regarding matters such as scheduling, billing, updates, information gathering, and confirmation of receipt or sending of correspondence and messages; or

(3) accompanying an active lawyer to a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyer who will appear as the representative of the client.

(d) Prior to or at the time of employing a person the lawyer knows or reasonably should know is a disbarred, suspended, or disability inactive lawyer, the lawyer shall serve upon the Office of Lawyers Professional Responsibility written notice of the employment, including a full description of such person's current license status. The notice shall state that the suspended, disbarred, or disability inactive lawyer shall not be employed to perform any of the activities prohibited by paragraph (b).

(e) Upon terminating the employment of the disbarred, suspended, or disability inactive lawyer, the employing lawyer shall promptly serve upon the Office of Lawyers Professional Responsibility written notice of the termination.

(Added effective for all lawyer conduct occurring on or after August 1, 1999; renumbered and amended effective October 1, 2005.)

PUBLIC SERVICE

Rule 6.1 Voluntary Pro Bono Publico Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:

(1) persons of limited means; or

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

(b) provide any additional services through:

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

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

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

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

(Amended effective January 1, 1996; amended effective October 1, 2005.)

Comment

[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The Minnesota State Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified but, during the course of his or her legal career, each lawyer should render on average per year the number of hours set forth in this rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as postconviction death penalty appeal cases.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under

these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rulemaking, and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

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

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

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory, or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims, and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural, and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system, or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator, or an arbitrator and engaging in legislative lobbying to improve the law, the legal system, or the legal profession are a few examples of the many activities that fall within this paragraph.

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

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

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

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this rule.

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

Rule 6.2 Accepting Appointments

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

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Comment

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

Appointed Counsel

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

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

Rule 6.3 Membership in Legal Services Organization

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

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

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

(Amended effective October 1, 2005.)

Comment

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

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

Rule 6.4 Law Reform Activities Affecting Client Interests

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

(Amended effective October 1, 2005.)

Comment

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 benefited.

Rule 6.5 Pro Bono Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program offering pro bono legal services, 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 1.7or 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 the rule.

(Added effective October 1, 2005.)

Comment

[1] Legal services organizations, courts and various 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 Rule 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 Rule 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 Rule 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

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 of law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(Amended effective October 1, 2005.)

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 the public.

[4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Rule 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communications, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive; and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this rule shall include the name of at least one lawyer or law firm responsible for its content.

(Amended effective January 1, 1990; amended effective August 31, 1993; amended effective January 1, 1996; amended effective October 1, 2005.)

Comment

[1] To assist the public in learning about and 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, email address, website, 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 and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic 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.

[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] Except as permitted under paragraphs (b)(1)-(b)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, 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. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and

5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed the person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek 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 the public 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 lawyer referral service.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a not-for-profit 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 the public, 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 the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person or telephonic contacts that would violate Rule 7.3.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these rules. This rule does not restrict referrals or divisions of revenues or net income among lawyers within a firm.

Rule 7.3 Solicitation of Clients

(a) A lawyer shall not by in-person or live telephone contact solicit professional employment from anyone 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 by written, recorded, or electronic communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a) if:

(1) the target of the solicitation 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 anyone known to be in need of legal services in a particular matter shall clearly and conspicuously include the words "Advertising Material" on the outside envelope, if any, and within any written, recorded, or electronic communication, unless the recipient of the communication is a person specified in paragraph (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.

(Amended effective August 31, 1993; amended effective October 1, 2005; amended effective April 1, 2015; amended effective June 11, 2015.)

Comment

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves direct in-person or live telephone contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, 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.

[3] This potential for abuse inherent in direct in-person or live telephone solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person or telephone persuasion that may overwhelm a person's judgment.

[4] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in-person or live telephone 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 or live telephone contact 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.

[5] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with someone 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 as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).

[7] 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 people who are seeking legal services for themselves. 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.

[8] The requirement in Rule 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.

[9] 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 Rule 8.4(a).

Rule 7.4 Communication of Fields of Practice and Certification

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

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

(d) In any communication subject to Rule 7.2, 7.3, or 7.5, a lawyer shall not state or imply that a lawyer is a specialist or certified as a specialist in a particular field of law except as follows:

(1) the communication shall clearly identify the name of the certifying organization, if any, in the communication; and

(2) if the attorney is not certified as a specialist or if the certifying organization is not accredited by the Minnesota Board of Legal Certification, the communication shall clearly state that the attorney is not certified by any organization accredited by that Board, and in any advertising subject to Rule 7.2, this statement shall appear in the same sentence that communicates the certification.

(Amended effective January 1, 1996; amended effective October 1, 2005.)

Comment

[1] Paragraph (a) of this rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of the 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 that has been accredited by the Board on Legal Certification. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

[4] Lawyers may also be certified as specialists by organizations that either have not yet been accredited to grant such certification or have been disapproved. In such instances, the consumer may be misled as to the significance of the lawyer's status as a certified specialist. The rule therefore

requires that a lawyer who chooses to communicate recognition by such an organization also clearly state the absence or denial of the organization's authority to grant such certification. Because lawyer advertising through public media and written or recorded communications invites the greatest danger of misleading consumers, the absence or denial of the organization's authority to grant certification must be clearly stated in such advertising in the same sentence that communicates the certification.

Rule 7.5 Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if 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.

(Amended effective October 1, 2005.)

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 Web site 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.

[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.

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 admission or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

(Amended effective October 1, 2005.)

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.

(Amended effective October 1, 2005.)

Comment

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Rule 8.3 Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of the applicable Code 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 that Rule 1.6 requires or allows a lawyer to keep confidential or information gained by a lawyer or judge while participating in a lawyers assistance program or other program providing assistance, support, or counseling to lawyers who are chemically dependent or have mental disorders.

(Amended April 14, 1992, effective June 1, 1992; amended effective July 1, 2000; amended effective October 1, 2005.)

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 a bona fide lawyers assistance program or other program that provides assistance, support or counseling to lawyers, including lawyers and judges who may be impaired due to chemical abuse or dependency, behavioral addictions, depression or other mental disorders. In that circumstance, providing for the confidentiality of information obtained by a lawyer-participant encourages lawyers and judges to participate and seek treatment through such programs. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance, which may then result in additional harm to themselves, their clients, and the public. The rule therefore exempts lawyers participating in such programs from the reporting obligation of paragraphs (a) and (b) with respect to information they acquire while participating.

A lawyer exempted from mandatory reporting under part (c) of the rule may nevertheless report misconduct in the lawyer's discretion, particularly if the impaired lawyer or judge indicates an intent to engage in future illegal activity, for example, the conversion of client funds. See the comments to Rule 1.6.

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;

(g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, status with regard to public assistance, ethnicity, or marital status in connection with a lawyer's professional activities;

(h) commit a discriminatory act, prohibited by federal, state, or local statute or ordinance that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including:

(1) the seriousness of the act;

(2) whether the lawyer knew that the act was prohibited by statute or ordinance;

(3) whether the act was part of a pattern of prohibited conduct; and

(4) whether the act was committed in connection with the lawyer's professional activities; or

(i) refuse to honor a final and binding fee arbitration award after agreeing to arbitrate a fee dispute.

(Amended effective January 1, 1990; amended April 14, 1992, effective June 1, 1992; amended effective October 1, 2005; amended effective April 1, 2015.)

Comment - 1991

[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. 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 the practice of law. Offenses involving violence, dishonesty, or 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] 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 attorney. 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.

[4] Paragraph (g) specifies a particularly egregious type of discriminatory act--harassment on the basis of sex, race, age creed, religion, color, national origin, disability, sexual orientation, or marital status. What constitutes harassment in this context may be determined with reference to antidiscrimination legislation and case law thereunder. This harassment ordinarily involves the active burdening of another, rather than mere passive failure to act properly.

[5] Harassment on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status may violate either paragraph (g) or paragraph (h). The harassment violates paragraph (g) if the lawyer committed it in connection with the lawyer's professional activities. Harassment, even if not committed in connection with the lawyer's professional activities, violates paragraph (h) if the harassment (1) is prohibited by antidiscrimination legislation and (2) reflects adversely on the lawyer's fitness as a lawyer, determined as specified in paragraph (h).

[6] Paragraph (h) reflects the premise that the concept of human equality lies at the very heart of our legal system. A lawyer whose behavior demonstrates hostility toward or indifference to the policy of equal justice under the law may thereby manifest a lack of character required of members of the legal profession. Therefore, a lawyer's discriminatory act prohibited by statute or ordinance may reflect adversely on his or her fitness as a lawyer even if the unlawful discriminatory act was not committed in connection with the lawyer's professional activities.

[7] Whether an unlawful discriminatory act reflects adversely on fitness as a lawyer is determined after consideration of all relevant circumstances, including the four factors listed in paragraph (h). It is not required that the listed factors be considered equally, nor is the list intended to be exclusive. For example, it would also be relevant that the lawyer reasonably believed that his or her conduct was protected under the state or federal constitution or that the lawyer was acting in a capacity for which the law provides an exemption from civil liability. See, e.g., Minnesota Statutes, section 317A.257 (unpaid director or officer of nonprofit organization acting in good faith and not willfully or recklessly).

[8] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(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.

Rule 8.5 Disciplinary Authority; Choice of Law

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer

not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

(Amended effective October 1, 2005.)

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) is subject to service of process in accordance with Rule 12, Rules on Lawyers Professional Responsibility. 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 potentially may be subject to more than one set of rules of professional conduct that 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 interests 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. With respect to conflicts of interest, in determining a lawyer's reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as within the scope of that paragraph may be considered if the agreement was obtained with the client's informed consent confirmed in the agreement.

[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.

APPENDIX 1

MAINTENANCE OF BOOKS AND RECORDS

Pursuant to Rule 1.15(i), Minnesota Rules of Professional Conduct (MRPC), the Lawyers Professional Responsibility Board adopted the following as the books and records required by Rule 1.15(h), MRPC:

Every attorney engaged in the private practice of law must maintain the books and records described in this Appendix to comply with the applicable provisions of the MRPC relating to funds and property received and disbursed on behalf of clients or otherwise held in a fiduciary capacity. Equivalent books and records demonstrating the same information in an easily accessible manner and in substantially the same detail are acceptable. Books and records may be prepared manually or by computer.

I. Trust Account Records. The following books and records must be contemporaneously maintained for funds and property received and disbursed by an attorney in a fiduciary capacity. These books and records must be separately maintained for each individual trust account.

1. An identification of all trust accounts maintained, including the name of the bank or other financial institution, account number, account name, date account opened, and an agreement with the bank establishing each account and its interest bearing nature. A record should also be maintained showing clearly whether each such account is pooled, with net interest paid to the IOLTA program, pooled with allocation of interest, or individual, including the client name. *See* Rules 1.15(e)and (f)(2), MRPC.

2. A check register for each trust account that chronologically shows all deposits and checks and the balance of funds remaining in the account.

a. Each deposit entry must include the date of the deposit, the amount, the identity of the client(s) for whom the funds were deposited, and the purpose of the deposit.

b. Each check entry must include the date the check was issued, the check number, the payee, the amount, the identity of the client for whom the check was issued, and the purpose of the check. An attorney may not make ATM or other cash withdrawals from a trust account and may not issue trust account checks in payment of the attorney's own personal or business expenses.

3. A subsidiary ledger for each client matter in which the attorney deposits funds into a trust account.

a. For every trust account transaction, attorneys must record on the appropriate client subsidiary ledger the date of deposit or disbursement, the amount of the transaction, the payee and check number (for disbursements), the purpose of the transaction, and the balance of funds remaining in the account on behalf of that client matter. An attorney shall not disburse funds from the trust account that would create a negative balance in any subsidiary ledger.

b. A separate subsidiary ledger for nominal funds of the attorney held in the trust account pursuant to Rule 1.15(a)(1), MRPC, to accommodate reasonably expected bank fees and charges. The amount of an attorney's own funds in a trust account shall not exceed $200. This ledger should also record any monthly service charges not offset or waived by the bank in the same month. A separate ledger should be maintained to record interest accrued but not transferred by the bank to the IOLTA program in the same month it is credited.

c. An attorney maintaining non-IOLTA accounts pursuant to Rule 1.15(f), MRPC, shall record on each client subsidiary ledger the monthly accrual of interest, and the date and amount of each interest disbursement, including disbursements from accrued interest for costs of establishing and administering the account.

4. A trial balance of the subsidiary ledgers, performed on a monthly basis, which shows each client matter for which the attorney is holding funds in a trust account, the balance of funds held on behalf of each client matter as of the date of the monthly bank statement, and a total of all such client balances. No client subsidiary ledger balance should be negative at any time. If at the time a trial balance is performed, however, a negative client subsidiary ledger balance has not yet been rectified, that balance should be viewed as zero for purposes of computing the trial balance total. A negative client subsidiary ledger balance may not serve to reduce the trial balance total.

5. A reconciliation of the check register balance, the subsidiary ledger trial balance total, and the bank statement balance performed on a monthly basis. The adjusted bank statement balance is determined by adding the outstanding deposits and subtracting the outstanding checks from the monthly bank statement balance.

[Sample trial balances and reconciliations are available from the Office of Lawyers Professional Responsibility.]

6. Bank statements, canceled checks, if they are provided with the bank statements, bank wire, electronic or telephone transfer confirmations, and duplicate deposit slips. Checks, fund transfer confirmations and deposit slips must be annotated with the identity of the affected client. Cash payments must be documented by a receipt countersigned by the payor, which identifies the client on whose behalf the cash payment was received. Attorneys making deposits using substitute checks pursuant to the Check Clearing for the 21st Century Act must request and retain image statements from the bank for each such deposit. For withdrawal by bank wire, electronic or telephone transfer, an attorney or law firm must create a written memorandum authorizing the transaction, signed by the attorney responsible for the transaction. The bank wire, electronic or telephone transfer must

be entered in the check register and appropriate client subsidiary ledger and include all the identifying information listed in paragraphs I(2)(b) and I(3)(a) of this Appendix.

7. **Electronic Record Retention.** An attorney who maintains trust account records by computer must print and retain, on a monthly basis, the check register, the trial balance of the subsidiary ledgers, and the reconciliation report. In the alternative, the check register, trial balance of the subsidiary ledgers and reconciliation report may be retained in a PDF form on an electronic device separate from the one on which these materials were created. Electronic records, both those maintained contemporaneously and those retained in a PDF form, should be regularly backed up by an appropriate storage device. The frequency of the back-up procedure should be directly related to the volume of activity in the trust account.

8. A record showing all property, specifically identified, other than cash, held in trust for clients or others, except that routine files, documents and items, such as real estate abstracts, which are not expected to be held indefinitely, need not be so recorded but should be documented in the files of the lawyer as to receipt and delivery.

9. Each trust account shall be maintained in a financial institution that is authorized by federal or state law to do business in Minnesota, is located, or has a branch office located, in Minnesota, and has executed a "Trust Account Overdraft Notification and IOLTA Comparability Agreement."

10. An attorney may accept payment of trust funds by credit card. If the credit card company is unable to credit the funds to the trust account, while debiting all transactional and other fees from the attorney's business or other non-trust account, however, all credit card payments must be deposited into the attorney's business or other non-trust account. The attorney must then immediately transfer the unearned portion of the funds to a trust account.

11. Except in the context of real estate sales transactions, an attorney shall not disburse funds from a trust account unless the bank in which the attorney maintains the trust account has made the funds available for disbursement and the instrument that is the source of the deposit has cleared the bank account on which it was issued.

II. Business Account Records. An attorney or law firm must maintain at least one bank account, other than the trust account, for funds and property received and disbursed outside the attorney's fiduciary capacity. The following books and records shall be maintained for such accounts:

1. A record in the form of a fees book or file of copies of billing invoices reflecting all fees charged and other billings to clients.

2. Copies of receipts, countersigned by the payor, for all cash payments.

3. Check registers, bank statements, canceled checks, if they are provided with the bank statements, and duplicate deposit slips sufficient to establish the receipt of earned fee payments from clients, costs advanced on behalf of clients, and similar receipts and disbursements.

4. A periodic reconciliation of the checkbook balance and the bank statement balance.

(Added effective September 30, 2005; amended effective June 26, 2008; amended effective July 1, 2010; amended effective June 26, 2015)

Professionalism Aspirations[1]

Adopted January 11, 2001

[1]A summary form of these Professionalism Aspirations is included at the end of the document. This summary version is intended to permit the standards to be posted, included in literature, or otherwise made available where the entire text would be cumbersome.

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Preamble

We, the judges and lawyers of Minnesota, have a special responsibility for the quality of justice. We have taken an oath to conduct ourselves in an upright and courteous manner with fidelity to the court and the client, promising no falsehood or deceit. Commensurate with this responsibility and unique oath is the obligation to conduct our affairs according to the highest standards of professionalism.

The following standards reflect our commitment to professionalism. They memorialize our obligations to each other, our clients and to the people of the State of Minnesota. They are designed to raise public confidence in the legal profession and the justice system through the promotion and protection of professionalism and civility.

These standards are not to be used as a basis for litigation, lawyer discipline, or court sanctions. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

TEXT OF RULES

I. Our Legal System

A lawyer owes personal dignity, integrity, and independence to the administration of justice. A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms.

A. Respect And Dignity. We will uphold the respect and dignity of judges, each member of the Bar, the law and the legal system.

B. Honesty. We will conduct our affairs with candor and honesty. Our word is our bond.

C. Equal Access. We will dedicate and commit ourselves to equal access to the legal system.

D. Education. We will educate our clients, the public, and other lawyers regarding the spirit and letter of these Professional Aspirations.

E. Appearance of Impropriety. We will always endeavor to conduct ourselves in such a manner as to avoid even the appearance of impropriety.

II. Lawyer to Client

A lawyer owes allegiance, learning, skill, and industry to a client. As lawyers, we shall employ appropriate legal procedures to protect and advance our clients' legitimate rights, claims, and objectives. In fulfilling our duties to each client, we will be mindful of our obligation to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

A. Independent Judgment.

1. We will be loyal and committed to our clients' lawful objectives, but will not permit that loyalty and commitment to interfere with our duty to provide objective and independent advice.

2. We will always be conscious of our duty to the system of justice.

3. We reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect our clients' lawful objectives.

4. We will advise our clients, if necessary, that they do not have a right to demand that we engage in abusive or offensive conduct and we will not engage in such conduct.

5. We will neither encourage nor cause clients to do anything that would be unethical or inappropriate if done by us.

B. Proper Conduct on Behalf of Clients.

1. We will affirm among parties and other lawyers that civility and courtesy are expected and are not a sign of weakness.

2. We will endeavor to achieve our clients' legitimate objectives in our office practice work and in litigation as expeditiously and economically as possible.

3. We will not employ tactics that are designed primarily to delay resolution of a matter or to harass or drain the financial resources of the parties.

III. Lawyer to Lawyer

A lawyer owes courtesy, candor, cooperation, and compliance with all agreements and mutual understandings to opposing counsel, in the conduct of an office practice and in pursuit of the resolution of legal issues. As professionals, ill feelings between clients should not influence our conduct, attitude, or demeanor toward opposing counsel. Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. A lawyer owes the same duty to an opposing party who is pro se.

A. Courtesy and Punctuality.

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.

2. 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 abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will be courteous, civil and prompt in oral and written communications and punctual in honoring scheduled appearances, meetings, depositions, appointments, etc. with opposing counsel.

4. We will disagree without being disagreeable. We recognize that effective representation does not require antagonistic or obnoxious behavior.

5. We will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations or acrimony toward opposing counsel, parties, and witnesses.

6. We will not ask a witness or an opposing party a question solely for the purpose of harassing or embarrassing that individual.

7. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

B. Drafting.

1. We will not quarrel over matters of form or style, but concentrate on matters of substance.

2. We will try to achieve the common goal in the preparation of agreements.

3. When we purport to identify for other counsel or parties changes we make in documents submitted for their review, we will identify all such changes accurately.

4. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

5. We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

6. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

C. Scheduling, Extensions, Cancellations.

1. We will not arbitrarily schedule a meeting, deposition, court appearance, hearing, or other proceeding until a good faith effort has been made to schedule it by agreement. If we are unable to contact the other lawyer, we will send written correspondence suggesting a time or times that will become operative unless an informal objection is directed to us within a set reasonable time.

2. We will endeavor in good faith to honor previously scheduled trial or hearing settings, vacations, seminars, meetings or other functions that produce good faith calendar conflicts on the part of opposing counsel. We will not seek accommodation from another member of the Bar for the rescheduling of any court setting, discovery, hearing, meeting, etc. unless a legitimate need exists.

3. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of our clients will not be adversely affected.

4. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

5. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed.

D. Discovery.

1. We will make reasonable efforts to conduct discovery by agreement.

2. We will refrain from excessive and/or abusive discovery.

3. We will comply with all reasonable discovery requests. We will not resist discovery requests that are not objectionable.

4. We will not seek court intervention to obtain discovery that is clearly improper and not desirable.

5. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

6. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.

7. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party.

8. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

9. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge. We will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. We will encourage witnesses to respond to all deposition questions that are reasonably understandable.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.

11. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

E. Sanctions. We will not seek or threaten sanctions or disqualifications without first conducting a reasonable investigation and unless it is necessary for protection of our client's lawful objectives or fully justified by the circumstances.

F. Opportunity to Respond.

1. We will not serve motions, pleadings or briefs in any manner that unfairly limits another party's opportunity to respond. We will not seek ex parte relief without first attempting to notify the opposing party or attorney. We will not file memoranda or affidavits that are not permitted by court rules. We will furnish opposing counsel copies of all submissions to the court either contemporaneously or as soon as practical.

2. We will not cause a default or dismissal to be entered, when we know the identity of an opposing counsel, without first making a good faith attempt to inquire about the counsel's intention to proceed.

G. Settlement.

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

2. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

H. Request During Trial or Hearing. During trial or hearing we will honor reasonable requests of opposing counsel that do not prejudice the rights of our clients or sacrifice tactical advantage.

I. Conduct of Others. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

IV. Lawyer and Judge

Lawyers and judges owe each other respect, diligence, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the court and the profession.

A. Lawyers' Duties to Court and Administrative Tribunal.

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

2. We will be punctual and prepared for all appearances so that all hearings, conferences, and trials may commence on time to the greatest extent possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom or administrative hearing area. We will advise our clients and witnesses appearing in these settings of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court or administrative hearing officer.

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

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 of any problems.

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

B. The Duties of Judges, Referees, and Administrative Law Judges to Lawyers and Parties.

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 insure that all proceedings are conducted in a civil manner.

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

3. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

4. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.

5. In scheduling all hearings, meetings and conferences, we will be considerate of time schedules of lawyers, parties, and witnesses.

6. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

7. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

8. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by exigencies of litigation practice.

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.

10. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom, or the causes which, a lawyer represents.

11. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

12. We will not adopt procedures that needlessly increase litigation expense.

C. The Duties of Judges, Referees, and Administrative Law Judges to Each Other.

1. We will be courteous, respectful, and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

2. In all written and oral communications, we will abstain from disparaging personal remarks, criticisms, or sarcastic or demeaning comments about another colleague.

3. We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.

Summary Standards

I. Our Legal System

A lawyer owes personal dignity, integrity, and independence to the administration of justice. A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms.

II. Lawyer to Client

A lawyer owes allegiance, learning, skill, and diligence to a client. As lawyers, we shall employ appropriate legal procedures to protect and advance our client's legitimate rights, claims, and objectives. In fulfilling our duties to each client, we will be mindful of our obligation to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

III. Lawyer to Lawyer

A lawyer owes courtesy, candor, cooperation, and compliance with all agreements and mutual understandings to opposing counsel whether in the conduct of an office practice or in the pursuit of litigation. As professionals, ill feelings between clients should not influence our conduct, attitude, or demeanor toward opposing counsel. Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. A lawyer owes the same duty to an opposing party who is pro se.

IV. Lawyer and Judge

Lawyers and judges owe each other respect, diligence, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the court and the profession.

Rules on Lawyers Professional Responsibility

Effective January 1, 1977
With amendments effective through July 14, 2021

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TEXT OF RULES

Rule 1. Definitions

As used in these Rules:

(1) "Board" means the Lawyers Professional Responsibility Board.

(2) "Chair" means the Chair of the Board.

(3) "Executive Committee" means the committee appointed by the Chair under Rule 4(d).

(4) "Director" means the Director of the Office of Lawyers Professional Responsibility.

(5) "District Bar Association" includes the Range Bar Association.

(6) "District Chair" means the Chair of a District Bar Association's Ethics Committee.

(7) "District Committee" means a District Bar Association's Ethics Committee.

(8) "Notify" means to give personal notice or to mail to the person at the person's last known address or the address maintained on this Court's attorney registration records, or to the person's attorney if the person is represented by counsel.

(9) "Panel" means a panel of the Board.

(Amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991.)

Rule 2. Purpose

It is of primary importance to the public and to the members of the Bar that cases of lawyers' alleged disability or unprofessional conduct be promptly investigated and disposed of with fairness and justice, having in mind the public, the lawyer complained of and the profession as a whole, and that disability or disciplinary proceedings be commenced in those cases where investigation discloses they are warranted. Such investigations and proceedings shall be conducted in accordance with these Rules.

(Amended July 22, 1982; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989.)

Rule 3. District Ethics Committee

(a) Composition. Each District Committee shall consist of:

(1) A Chair appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chair; and

(2) Four or more persons whom the District Bar Association (or, upon failure thereof, this Court) may appoint to three-year terms except that shorter terms shall be used where necessary to assure that approximately one-third of all terms expire annually. No person may serve more than two consecutive three-year terms, nor more than a total of four three-year terms, in addition to any

additional shorter term for which the person was originally appointed and any period served as District Chair. At least 20 percent of each District Committee's members shall be nonlawyers. Every effort shall be made to appoint lawyer members from the various areas of practice. The Board shall monitor District Committee compliance with this objective and the District Committee shall include information on compliance in its annual report to the Court.

(b) Duties. The District Committee shall investigate complaints of lawyers' alleged unprofessional conduct and make reports and recommendations thereon as provided in these Rules in a format prescribed by the Executive Committee. It shall meet at least annually and from time to time as required. The District Chair shall prepare and submit an annual report to the Board and this Court in a format specified by the Executive Committee and make such other reports as the Executive Committee may require.

(Amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991.)

Rule 4. Lawyers Professional Responsibility Board

(a) Composition. The Board shall consist of:

(1) A Chair appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chair; and

(2) Thirteen lawyers having their principal office in this state, six of whom the Minnesota State Bar Association may nominate, and nine nonlawyers resident in this State, all appointed by this Court to three-year terms except that shorter terms shall be used where necessary to assure that as nearly as may be one-third of all terms expire each February 1. No person may serve more than two three-year terms, in addition to any additional shorter term for which the person was originally appointed and any period served as Chair. To the extent possible, members shall be geographically representative of the state and lawyer members shall reflect a broad cross section of areas of practice.

(b) Compensation. The Chair, other Board members, and other panel members shall serve without compensation, but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

(c) Duties. The Board is responsible for administering these rules, for establishing the policies that govern the lawyer discipline and disability system, and for providing recommendations and guidance to the Director regarding the operations of the Office of Lawyers Professional Responsibility. The Board may, from time to time, issue opinions on questions of professional conduct. The Board shall prepare and submit to this Court an annual report covering the operation of the lawyer discipline and disability system. The Board may elect a Vice-Chair and specify the Vice-Chair's duties. Board meetings are open to the public, except the Board may go into closed session not open to the public to discuss matters protected by Rule 20 or for other good cause.

(d) Executive Committee. The Executive Committee, consisting of the Chair, and two lawyers and two nonlawyers designated annually by the Chair, shall be responsible for carrying out the duties set forth in these Rules. The Executive Committee shall act on behalf of the Board between Board meetings. If requested by the Executive Committee, it shall have the assistance of the State Court Administrator's office in carrying out its responsibilities. Members shall have served at least one year as a member of the Board prior to appointment to the Executive Committee. Members shall not be assigned to Panels during their terms on the Executive Committee.

(e) Panels. The Chair shall divide the Board into Panels, each consisting of not less than three Board members and at least one of whom is a nonlawyer, and shall designate a Chair and a Vice-

Chair for each Panel. Three Panel members, at least one of whom is a nonlawyer and at least one of whom is a lawyer, shall constitute a quorum. No Board member shall be assigned to a matter in which disqualification would be required of a judge under Canon 3 of the Code of Judicial Conduct. The Board's Chair or the Vice-Chair may designate substitute Panel members from current or former Board members or current or former District Committee members for the particular matter, provided, that any panel with other than current Board members must include at least one current lawyer Board member. A Panel may refer any matters before it to the full Board, excluding members of the Executive Committee.

(f) Assignment to Panels. The Director shall assign matters to Panels in rotation. The Executive Committee may, however, redistribute case assignments to balance workloads among the Panels, appoint substitute panel members to utilize Board member or District Committee member expertise, and assign appeals of multiple admonitions issued to the same lawyer to the same Panel for hearing.

(g) Approval of petitions. Except as provided in these Rules or ordered by this Court, no petition for disciplinary action shall be filed with this Court without the approval of a Panel or the Board.

(Amended and effective May 11, 1978; amended July 22, 1982; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended to govern all lawyer disciplinary actions commenced on or after January 1, 1995; amended effective July 14, 2021.)

Rule 5. Director

(a) Appointment. The Director is an employee of the Judicial Branch, appointed by and serving at the pleasure of this Court. The State Court Administrator will evaluate the Director's performance, with input from the Board, annually or at such times as this Court directs. Every two years, the State Court Administrator and the Board shall make recommendations to this Court concerning the continuing service of the Director.

(b) Duties. The Director is responsible for the day-to-day operations of the Office of Lawyers Professional Responsibility, shall supervise the employees of that Office, shall prepare and submit to the Board an annual report covering the operation of the Office of Lawyers Professional Responsibility, and shall make such other reports to the Board as the Board or this Court through the Board may require the Director to provide.

(c) Employees. The Director when authorized by the Board may employ, on behalf of this Court, persons at such compensation as the Board shall recommend and as this Court may approve.

(d) Client Security Board Services. Subject to the approval of this Court, the Client Security Board and the Lawyers Board, the Director may provide staff investigative and other services to the Client Security Board. Compensation for such services may be paid by the Client Security Board to the Director's office upon such terms as are approved by the Lawyers Board and the Client Security Board. The Lawyers Board and the Client Security Board may also establish further terms for the provision by the Director of such services.

(Amended July 22, 1982; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective July 14, 2021.)

Rule 6. Complaints

(a) Investigation. All complaints of lawyers' alleged unprofessional conduct or allegations of disability shall be investigated pursuant to these Rules. No District Committee investigator shall

investigate a matter in which disqualification would be required of a judge under Canon 3 of the Code of Judicial Conduct. No employee of the office of Lawyers Professional Responsibility shall be assigned to a matter if the employee's activities outside the Office are such that a judge with similar activities would be disqualified under Canon 3 of the Code of Judicial Conduct.

(b) Notification; referral. If a complaint of a lawyer's alleged unprofessional conduct is submitted to a District Committee, the District Chair promptly shall notify the Director of its pendency. If a complaint is submitted to the Director, it shall be referred for investigation to the District Committee of the district where the lawyer's principal office is located or in exceptional circumstances to such other District Committee as the Director reasonably selects, unless the Director determines to investigate it without referral or that discipline is not warranted.

(c) Copies of investigator's report. Upon the request of the lawyer being investigated, the Director shall provide a copy of the investigator's report, whether that investigation was undertaken by the District Committee or the Director's Office.

(d) Opportunity to respond to statements. The District Committee or the Director's Office shall afford the complainant an opportunity to reply to the lawyer's response to the complaint.

(Amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended to govern all lawyer disciplinary actions commenced on or after January 1, 1995.)

Rule 6X. (Repealed August 1, 1999.)

Rule 6Y. (Repealed August 1, 1999.)

Rule 6Z. Complaints Involving Judges

(a) Jurisdiction. The Lawyers Professional Responsibility Board has jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office and conduct of a part-time judge, including referees of conciliation court, not occurring in a judicial capacity. The Board on Judicial Standards may also exercise jurisdiction to consider whether judicial discipline is warranted in such matters.

(b) Procedure for Conduct Occurring Prior to Assumption of Judicial Office.

(1) Complaint; Notice. If either the executive secretary or the Office of Lawyers Professional Responsibility makes an inquiry or investigation, or receives a complaint, concerning the conduct of a judge occurring prior to assumption of judicial office, it shall so notify the other. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumes judicial office.

(2) Investigation. Complaints of a judge's unprofessional conduct occurring prior to the judge assuming judicial office shall be investigated by the Office of Lawyers Professional Responsibility and processed pursuant to the Rules on Lawyers Professional Responsibility. The Board on Judicial Standards may suspend a related inquiry pending the outcome of the investigation and/or proceedings.

(3) Authority of Board on Judicial Standards to Proceed Directly to Public Charges. If probable cause has been determined under Rule 9(j)(ii) of the Rules on Lawyers Professional Responsibility or proceedings before a referee or the Supreme Court have been commenced under those rules, the Board on Judicial Standards may, after finding sufficient cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a formal complaint under Rule 8 of those rules.

(4) Record of Lawyer Discipline Admissible in Judicial Disciplinary Proceeding. If there is a hearing under Rule 9 or Rule 14 of the Rules on Lawyers Professional Responsibility, the record of the hearing, including the transcript, and the findings and conclusions of the panel, referee, and/or the Court shall be admissible in any hearing convened pursuant to Rule 10 of the Rules of the Board on Judicial Standards. Counsel for the judge and the Board on Judicial Standards may be permitted to introduce additional evidence, relevant to violations of the Code of Judicial Conduct, at the hearing under Rule 10.

(Added effective March 30, 1999.)

Advisory Committee Comment - 1999 Amendment

Rule 6Z outlines the process for handling complaints concerning conduct by a judge before assuming judicial office. Rule 6Z(a) grants the Lawyers Professional Responsibility Board jurisdiction to consider whether such conduct warrants lawyer discipline, while the Board on Judicial Standards retains jurisdiction to consider whether the same conduct warrants judicial discipline. R.Bd.Jud.Std. 2.

The procedural provisions of Rule 6Z(b)(1)-(4) are identical to those in R.Bd.Jud.Stds. 6Z(a)-(d). The committee felt that repetition of the significant procedural provisions was more convenient and appropriate than a cross-reference.

Rule 6Z(b)(1) is identical to R.Bd.Jud.Std. 6Z(a) and requires the staff of the Lawyers Professional Responsibility Board and the Judicial Standards Board to notify each other about complaints concerning conduct by a judge occurring before the judge assumed judicial office. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumed judicial office.

Rule 6Z(b)(1) neither increases nor decreases the authority of the executive secretary or Office of Lawyers Professional Responsibility to investigate or act on any matter. That authority is governed by other rules. Rule 6Z(b)(1) merely establishes a mutual duty to provide notice about complaints or inquiries concerning conduct of a judge occurring before the judge assumed judicial office.

Although a fair number of complaints received by the executive secretary and the Office of Professional Responsibility are frivolous, there have been relatively few complaints concerning conduct occurring prior to a judge assuming judicial office. Thus, the committee believes that this procedure will not result in a needless duplication of efforts.

Under Rule 6Z(b)(2) and its counterpart R.Bd.Jud.Std. 6Z(b), it is contemplated that complaints about the conduct of a judge occurring prior to the judge assuming judicial office will be investigated in the first instance by the Office of Lawyers Professional Responsibility, and the results would be disclosed to the Board on Judicial Standards. R.Bd.Jud.Std. 5(a)(4); R.L.Prof.Resp. 20(a)(10). This allows for efficient and effective use of investigative resources by both disciplinary boards.

Rule 6Z(b)(3) is identical to R.Bd.Jud.Std. 6Z(c) and authorizes the Board on Judicial Standards to proceed directly to issuance of a formal complaint under R.Bd.Jud.Std. 8 when there has been a related public proceeding under the Rules on Lawyers Professional Responsibility involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under R.Bd.Jud.Std. 7 may only serve to delay the judicial disciplinary process.

Rule 6Z(b)(3) does not prohibit the Board on Judicial Standards from proceeding to public disciplinary proceedings in cases in which only private discipline (e.g., an admonition) has been imposed under the Rules on Lawyers Professional Responsibility for conduct of a judge occurring prior to the judge assuming judicial office. In these cases, the Board on Judicial Standards would

be required to follow R.Bd.Jud.Std. 7 (unless, of course, the matter is resolved earlier, for example, by dismissal or public reprimand).

Rule 6Z(b)(4) is identical toR.Bd.Jud.Std. 6Z(d) and authorizes the use of the hearing record and the findings and recommendations of the lawyer disciplinary process in the judicial disciplinary process. This is intended to streamline the judicial disciplinary hearing when there has already been a formal fact finding hearing in the lawyer disciplinary process, and permits the Supreme Court to rule on both disciplinary matters as quickly as possible.

Under Rule 6Z(b)(4) it is contemplated that the hearing record and the findings and conclusions of the lawyer disciplinary process will be the first evidence introduced in the judicial disciplinary hearing. Counsel for the Board on Judicial Standards and the judge may be permitted to introduce additional evidence relevant to alleged Code of Judicial Conduct violations at the judicial disciplinary hearing. Counsel must be aware that there may be situations in which the introduction of additional evidence will not be permitted. See, e.g., In re Gillard, 260 N.W.2d 562, 564 (Minn. 1977) (after review of hearing record and findings and conclusions from lawyer disciplinary process, Supreme Court ruled that findings would not be subject to collateral attack in the related judicial disciplinary proceeding and that additional evidence may be introduced only as a result of a stipulation or order of the fact finder); In re Gillard, 271 N.W.2d 785, 809 (Minn. 1978) (upholding removal and disbarment where Board on Judicial Standards as fact finder refused to consider additional testimony but allowed filing of deposition and exhibits and made alternative findings based on those filings). Although the Rules of the Board on Judicial Standards do not expressly provide for a pre-hearing conference, it is contemplated that admissibility issues will be resolved by the presider of the fact finding panel sufficiently in advance of the hearing to allow the parties adequate time to prepare for the hearing.

Rule 7. District Committee Investigation

(a) Assignment; assistance. The District Chair may investigate or assign investigation of the complaint to one or more of the Committee's members, and may request the Director's assistance in making the investigation. The investigation may be conducted by means of written and telephonic communication and personal interviews.

(b) Report. The investigator's report and recommendations shall be submitted for review and approval to the District Chair, the Chair's designee or to a committee designated for this purpose by the District Chair, prior to its submission to the Director. The report shall include a recommendation that the Director:

(1) Determine that discipline is not warranted;

(2) Issue an admonition;

(3) Refer the matter to a Panel; or

(4) Investigate the matter further.

If the report recommends discipline not warranted or admonition, the investigator shall include in the report a draft letter of disposition in a format prescribed by the Director.

(c) Time. The investigation shall be completed and the report made promptly and, in any event within 90 days after the District Committee received the complaint, unless good cause exists. If the report is not made within 90 days, the District Chair or the Chair's designee within that time shall notify the Director of the reasons for the delay. If a District Committee has a pattern of responding substantially beyond the 90-day limitation, the Director shall advise the Board and the Chair shall seek to remedy the matter through the President of the appropriate District Bar Association.

(d) Removal. The Director may at any time and for any reason remove a complaint from a District Committee's consideration by notifying the District Chair of the removal.

(e) Notice to complainant. The Director shall keep the complainant advised of the progress of the proceedings.

(Amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended effective August 1, 1999.)

Rule 8. Director's Investigation

(a) Initiating investigation. At any time, with or without a complaint or a District Committee's report, and upon a reasonable belief that professional misconduct may have occurred, the Director may make such investigation as the Director deems appropriate as to the conduct of any lawyer or lawyers; provided, however, that investigations to be commenced upon the sole initiative of the Director shall not be commenced without the prior approval of the Executive Committee.

(b) Complaints by criminal defendants. No investigation shall commence on a complaint by or on behalf of a party represented by court appointed counsel, insofar as the complaint against the court appointed attorney alleges incompetent representation by the attorney in the pending matter. Any such complaint shall be summarily dismissed without prejudice. The Director's dismissal shall inform the complainant that the complaint may be sent to the chief district judge or trial court judge involved in the pending matter. The judge may, at any time, refer the matter to the Director for investigation. The Director may communicate with the appropriate court regarding the complaint and its disposition.

(c) Investigatory subpoena. With the Board Chair or Vice-Chair's approval upon the Director's application showing that it is necessary to do this before issuance of charges under Rule 9(a), the Director may subpoena and take the testimony of any person believed to possess information concerning possible unprofessional conduct of a lawyer. The examination shall be recorded by such means as the Director designates. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the examination.

(d) Disposition.

(1) Determination Discipline not Warranted. If, in a matter where there has been a complaint, the Director concludes that discipline is not warranted, the Director shall so notify the lawyer involved, the complainant, and the Chair of the District Committee, if any, that has considered the complaint. The notification shall:

(i) Set forth a brief explanation of the Director's conclusion;

(ii) Set forth the complainant's identity and the complaint's substance; and

(iii) Inform the complainant of the right to appeal under subdivision (e).

(2) Admonition. In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional but of an isolated and nonserious nature, the Director may issue an admonition. The Director shall issue an admonition if so directed by a Board member reviewing a complainant appeal, under the circumstances identified in Rule 8(e). The Director shall notify the lawyer in writing:

(i) Of the admonition;

(ii) That the admonition is in lieu of the Director's presenting charges of unprofessional conduct to a Panel;

(iii) That the lawyer may, by notifying the Director in writing within 14 days, demand that the Director so present the charges to a Panel which shall consider the matter de novo or instruct the Director to file a Petition for Disciplinary Action in this Court; and

(iv) That unless the lawyer so demands, the Director after that time will notify the complainant, if any, and the Chair of the District Committee, if any, that has considered the complaint, that the Director has issued the admonition.

If the lawyer makes no demand under clause (iii), the Director shall notify as provided in clause (iv). The notification to the complainant, if any, shall inform the complainant of the right to appeal under subdivision (e).

(3) Stipulated probation.

(i) In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional and that a private probation is appropriate, and the Board Chair or Vice-Chair approves, the Director and the lawyer may agree that the lawyer will be subject to private probation for a specified period up to two years, provided the lawyer throughout the period complies with specified reasonable conditions. At any time during the period, with the Board Chair or Vice-Chair's approval, the Director and the lawyer may agree to modify the agreement or to one extension of it for a specified period up to two additional years. The Director shall maintain a permanent disciplinary record of all stipulated probations.

(ii) The Director shall notify the complainant, if any, and the Chair of the District Committee, if any, that has considered the complaint, of the agreement and any modification. The notification to the complainant, if any, shall inform the complainant of the right to appeal under subdivision (e).

(iii) If it appears that the lawyer has violated the conditions of the probation, or engaged in further misconduct, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by a Panel Chair chosen in rotation, file a petition for disciplinary action under Rule 12. A lawyer may, in the stipulation for probation, waive the right to such consideration by the Panel or Panel Chair.

(4) Submission to Panel. The Director shall submit the matter to a Panel under Rule 9 if:

(i) In any matter, with or without a complaint, the Director concludes that public discipline is warranted;

(ii) The lawyer makes a demand under subdivision (d) (2)(iii);

(iii) A reviewing Board member so directs upon an appeal under subdivision (e); or

(iv) The Director determines that a violation of the terms of a conditional admission agreement warrants revocation of the conditional admission.

(5) Extension or Modification of a Conditional Admission Agreement. If, in a matter involving a complaint against a conditionally admitted lawyer the Director determines that the conditional admission agreement was violated, the Director may enter into an agreement with the lawyer and the Board of Law Examiners to modify or extend the terms of the agreement for a period not to exceed two years.

(e) Review by Lawyers Board. If the complainant is not satisfied with the Director's disposition under Rule 8(d)(1), (2) or (3), the complainant may appeal the matter by notifying the Director in writing within 14 days. The Director shall notify the lawyer of the appeal and assign the matter by

rotation to a Board member, other than an Executive committee member, appointed by the Chair. The reviewing Board member may:

(1) approve the Director's disposition; or

(2) direct that further investigation be undertaken; or

(3) if a district ethics committee recommended discipline, but the Director determined that discipline is not warranted, the Board member may instruct the Director to issue an admonition; or

(4) in any case that has been investigated, if the Board member concludes that public discipline is warranted, the Board member may instruct the Director to issue charges of unprofessional conduct for submission to a Panel other than the Board member's own.

The reviewing Board member shall set forth an explanation of the Board member's action. A summary dismissal by the Director under Rule 8(b) shall be final and may not be appealed to a Board member for review under this section.

(Amended July 22, 1982; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended to govern all lawyer disciplinary actions commenced on or after January 1, 1995; amended effective September 1, 2005.)

Rule 9. Panel Proceedings

(a) Charges. If the matter is to be submitted to a Panel, the matter shall proceed as follows:

(1) The Director shall prepare charges of unprofessional conduct, assign them to a Panel by rotation, and notify the lawyer of the Charges, the name, address, and telephone number of the Panel Chair and Vice Chair, and the provisions of this Rule. Within 14 days after the lawyer is notified of the Charges, the lawyer shall submit an answer to the Charges to the Panel Chair and the Director and may submit a request that the Panel conduct a hearing. Within ten days after the lawyer submits an answer, the Director and the lawyer may submit affidavits and other documents in support of their positions.

(2) The Panel shall make a determination in accordance with paragraph (j) within 40 days after the lawyer is notified of the Charges based on the documents submitted by the Director and the lawyer, except in its discretion, the Panel may hear oral argument or conduct a hearing. If the Panel orders a hearing, the matter shall proceed in accordance with subdivisions (b) through (i). If the Panel does not order a hearing, subdivisions (b) through (i) do not apply.

(3) The Panel Chair may extend the time periods provided in this subdivision for good cause.

(b) Setting Pre-Hearing Meeting. If the Panel orders a hearing, the Director shall notify the lawyer of:

(1) The time and place of the pre-hearing meeting; and

(2) The lawyer's obligation to appear at the time set unless the meeting is rescheduled by agreement of the parties or by order of the Panel Chair or Vice-Chair.

(c) Request for admission. Either party may serve upon the other a request for admission. The request shall be made before the pre-hearing meeting or within ten days thereafter. The Rules of Civil Procedure for the District Courts applicable to requests for admissions govern, except that the time for answers or objections is ten days and the Panel Chair or Vice-Chair shall rule upon

any objections. If a party fails to admit, the Panel may award expenses as permitted by the Rules of Civil Procedure for District Courts.

(d) Deposition. Either party may take a deposition as provided by the Rules of Civil Procedure for the District Courts. A deposition under this Rule may be taken before the pre-hearing meeting or within ten days thereafter. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the deposition. The lawyer shall be denominated by number or randomly selected initials in any District Court proceeding.

(e) Pre-Hearing meeting. The Director and the lawyer shall attend a pre-hearing meeting. At the meeting:

(1) The parties shall endeavor to formulate stipulations of fact and to narrow and simplify the issues in order to expedite the Panel hearing; and

(2) Each party shall mark and provide the other party with a copy of each affidavit or other exhibit to be introduced at the Panel hearing. The genuineness of each exhibit is admitted unless objection is served within ten days after the prehearing meeting. If a party objects, the Panel may award expenses of proof as permitted by the Rules of Civil Procedure for the District Courts. No additional exhibit shall be received at the Panel hearing without the opposing party's consent or the Panel's permission.

(f) Setting Panel hearing. Promptly after the prehearing meeting, the Director shall schedule a hearing by the Panel on the charges and notify the lawyer of:

(1) The time and place of the hearing;

(2) The lawyer's right to be heard at the hearing; and

(3) The lawyer's obligation to appear at the time set unless the hearing is rescheduled by agreement of the parties or by order of the Panel Chair or Vice-Chair.

The Director shall also notify the complainant, if any, of the hearing's time and place. The Director shall send each Panel member a copy of the charges, of any stipulations, and of the prehearing statement. Each party shall provide to each Panel member in advance of the Panel hearing, copies of all documentary exhibits marked by that party at the prehearing meeting, unless the parties agree otherwise or the Panel Chair or Vice-Chair orders to the contrary.

(g) Referee probable cause hearing. Upon the certification of the Panel Chair and the Board Chair to the Court that extraordinary circumstances indicate that a matter is not suitable for submission to a Panel under this Rule, because of exceptional complexity or other reasons, the Court may appoint a referee with directions to conduct a probable cause hearing acting as a Panel would under this Rule, or the Court may remand the matter to a Panel under this Rule with instructions, or the Court may direct the Director to file with this Court a petition for disciplinary action under Rule 12(a). If a referee is appointed to substitute for a Panel, the referee shall have the powers of a district court judge and Ramsey County District Court shall not exercise such powers in such case. If the referee so appointed determines there is probable cause as to any charge and a petition for disciplinary action is filed in this Court, the Court may appoint the same referee to conduct a hearing on the petition for disciplinary action under Rule 14. If a referee appointed under Rule 14 considers all of the evidence presented at the probable cause hearing, a transcript of that hearing shall be made part of the public record.

(h) Form of evidence at Panel hearing. The Panel shall receive evidence only in the form of affidavits, depositions or other documents except for testimony by:

(1) The lawyer;

(2) A complainant who affirmatively desires to attend; and

(3) A witness whose testimony the Panel Chair or Vice-Chair authorized for good cause.

If testimony is authorized, it shall be subject to cross-examination and the Rules of Evidence and a party may compel attendance of a witness or production of documentary or tangible evidence as provided in the Rules of Civil Procedure for the District Courts. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas, motions respecting subpoenas, motions to compel witnesses to testify or give evidence, and determinations of claims of privilege. The lawyer shall be denominated by number or randomly selected initials in any district court proceeding.

(i) Procedure at Panel hearing. Unless the Panel for cause otherwise permits, the Panel hearing shall proceed as follows:

(1) The Chair shall explain the purpose of the hearing, which is:

(i) to determine whether there is probable cause to believe that public discipline is warranted, and the Panel will terminate the hearing on any charge whenever it is satisfied that there is or is not such probable cause;

(ii) if an admonition has been issued under Rule 8(d)(2) or 8(e), to determine whether the Panel should affirm the admonition on the ground that it is supported by clear and convincing evidence, should reverse the admonition, or, if there is probable cause to believe that public discipline is warranted, should instruct the Director to file a petition for disciplinary action in this Court; or

(iii) to determine whether there is probable cause to believe that a conditional admission agreement has been violated, thereby warranting revocation of the conditional admission to practice law, and that the Panel will terminate the hearing whenever it is satisfied there is or is not such probable cause.

(2) The Director shall briefly summarize the matters admitted by the parties, the matters remaining for resolution, and the proof which the Director proposes to offer thereon;

(3) The lawyer may respond to the Director's remarks;

(4) The parties shall introduce their evidence in conformity with the Rules of Evidence except that affidavits and depositions are admissible in lieu of testimony;

(5) The parties may present oral arguments;

(6) The complainant may be present for all parts of the hearing related to the complainant's complaint except when excluded for good cause; and

(7) The Panel shall either recess to deliberate or take the matter under advisement.

(j) Disposition. The Panel shall make one of the following determinations:

(1) In the case of charges of unprofessional conduct, the Panel shall:

(i) determine that there is not probable cause to believe that public discipline is warranted, or that there is not probable cause to believe that revocation of a conditional admission is warranted;

(ii) if it finds probable cause to believe that public discipline is warranted, instruct the Director to file in this Court a petition for disciplinary action. The Panel shall not make a recommendation as to the matter's ultimate disposition;

(iii) if it concludes that the attorney engaged in conduct that was unprofessional but of an isolated and nonserious nature, the Panel shall state the facts and conclusions constituting unprofessional conduct and issue an admonition. If the Panel issues an admonition based on the parties' submissions without a hearing, the lawyer shall have the right to a hearing de novo before a different Panel. If the Panel issues an admonition following a hearing, the lawyer shall have the right to appeal in accordance with Rule 9(m); or

(iv) if it finds probable cause to revoke a conditional admission agreement, instruct the Director to file in this Court a petition for revocation of conditional admission.

(2) If the Panel held a hearing on a lawyer's appeal of an admonition that was issued under Rule 8(d)(2), or issued by another panel without a hearing, the Panel shall affirm or reverse the admonition, or, if there is probable cause to believe that public discipline is warranted, instruct the Director to file a petition for disciplinary action in this Court.

(k) Notification. The Director shall notify the lawyer, the complainant, if any, and the District Committee, if any, that has the complaint, of the Panel's disposition. The notification to the complainant, if any, shall inform the complainant of the right to petition for review under subdivision (l). If the Panel affirmed the Director's admonition, the notification to the lawyer shall inform the lawyer of the right to appeal to the Supreme Court under subdivision (m).

(l) Complainant's petition for review. If not satisfied with the Panel's disposition, the Complainant may within 14 days file with the Clerk of the Appellate Courts a petition for review. The complainant shall, prior to or at the time of filing, serve a copy of the petition for review upon the respondent and the Director and shall file an affidavit of service with the Clerk of the Appellate Courts. The respondent shall be denominated by number or randomly selected initials in the proceeding. This Court will grant the review only if the petition shows that the Panel acted arbitrarily, capriciously, or unreasonably. If the Court grants review, it may order such proceedings as it deems appropriate. Upon conclusion of such proceedings, the Court may dismiss the petition or, if it finds that the Panel acted arbitrarily, capriciously, or unreasonably, remand the matter to the same or a different Panel, direct the filing of a petition for disciplinary action or a petition for revocation of conditional admission, or take any other action as the interest of justice may require.

(m) Respondent's appeal to Supreme Court. The lawyer may appeal a Panel's affirmance of the Director's admonition or an admonition issued by a Panel by filing a notice of appeal, with proof of service, with the Clerk of Appellate Courts and by serving a copy on the Director within 30 days after being notified of the Panel's action. The respondent shall be denominated by number or randomly selected initials in the proceeding. The Director shall notify the complainant, if any, of the respondent's appeal. This Court may review the matter on the record or order such further proceedings as it deems appropriate. Upon conclusion of such proceedings, the Court may either affirm the decision or make such other disposition as it deems appropriate.

(n) Manner of recording. The Director shall arrange for a court reporter to make a record of the proceedings as in civil cases.

(o) Panel Chair authority. Requests or disputes arising under this Rule before the Panel hearing commences may be determined by the Panel Chair or Vice-Chair. For good cause shown, the Panel Chair or Vice-Chair may shorten or enlarge time periods for discovery under this Rule.

(Amended July 22, 1982; amended October 22, 1984; amended July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended to govern all lawyer disciplinary actions commenced on or after January 1, 1995; amended effective June 13, 1996; amended effective June 24, 1996; amended effective for lawyer discipline matters

pending or commenced after August 1, 1999; amended effective September 1, 2005; amended effective July 1, 2009; amended effective October 1, 2014.)

Rule 10. Dispensing with Panel Proceedings

(a) Agreement of parties. The parties by written agreement may dispense with some or all procedures under Rule 9 before the Director files a petition under Rule 12.

(b) Admission. If the lawyer admits some or all charges, the Director may dispense with some or all procedures under Rule 9 and file a petition for disciplinary action together with the lawyer's admission. This Court may act thereon with or without any of the procedures under Rules 12, 13, or 14.

(c) Criminal conviction or guilty plea. If a lawyer pleads guilty to or is convicted of a felony under Minnesota statutes, a crime punishable by incarceration for more than one year under the laws of any other jurisdiction, or any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit such a crime, the Director may either submit the matter to a Panel or, with the approval of the Chair of the Board, file a petition under Rule 12.

(d) Other serious matters. In matters in which there are an attorney's admissions, civil findings, or apparently clear and convincing documentary evidence of an offense of a type for which the Court has suspended or disbarred lawyers in the past, such as misappropriation of funds, repeated nonfiling of personal income tax returns, flagrant noncooperation including failure to submit an answer or failure to attend a prehearing meeting as required by Rule 9, fraud and the like, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by the Panel Chair, file the petition under Rule 12.

(e) Additional charges. If a petition under Rule 12 is pending before this Court, the Director must present the matter to the Panel Chair, or if the matter was not heard by a Panel or the Panel Chair is unavailable, to the Board Chair or Vice-Chair, for approval before amending the petition to include additional charges based upon conduct committed before or after the petition was filed.

(f) Discontinuing Panel proceedings. The Director may discontinue Panel proceedings for the matter to be disposed of under Rule 8(d)(1), (2), or (3).

(Amended July 22, 1982; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended effective July 1, 2009.)

Rule 11. Resignation

This Court may at any time, with or without a hearing and with any conditions it may deem appropriate, grant or deny a lawyer's petition to resign from the bar. A copy of a lawyer's petition to resign from the bar shall be served upon the Director. The petition with proof of service shall be filed with this Court. If the Director does not object to the petition, the Director shall promptly advise the Court. If the Director objects, the Director shall also advise the Court, but then submit the matter to a Panel, which shall conduct a hearing and make a recommendation to the Court. The recommendation shall be served upon the petitioner and filed with the Court.

(Amended October 16, 1981; amended effective July 1, 1986; amended July 1, 1987; amended effective January 1, 1989; amended effective October 1, 2014.)

Rule 12. Petition for Disciplinary Action

(a) Petition. When so directed by a Panel or by this Court or when authorized under Rule 10 or this Rule, the Director shall file with this Court a petition for disciplinary action or a petition for revocation of conditional admission, with proof of service. The petition shall set forth the unprofessional conduct charges. When a lawyer is subject to a probation ordered by this Court and the Director concludes that the lawyer has breached the conditions of the probation or committed additional serious misconduct, the Director may file with this Court a petition for revocation of probation and further disciplinary action with proof of service.

(b) Service. The Director shall cause the petition to be served upon the respondent in the same manner as a summons in a civil action. If the respondent has a duly appointed resident guardian or conservator service shall be made thereupon in like manner.

(c) Respondent not found.

(1) Suspension. If the respondent cannot be found in the state, the Director shall mail a copy of the petition to the respondent's last known address and file an affidavit of mailing with this Court. Thereafter the Director may apply to this Court for an order suspending the respondent from the practice of law. A copy of the order, when made and filed, shall be mailed to each district court judge of this state. Within one year after the order is filed, the respondent may move this Court for a vacation of the order of suspension and for leave to answer the petition for disciplinary action.

(2) Order to show cause. If the respondent does not so move, the Director shall petition this Court for an order directing the respondent to show cause to this Court why appropriate disciplinary action should not be taken. The order to show cause shall be returnable not sooner than 20 days after service. The order may be served on the respondent by publishing it once each week for three weeks in the regular issue of a qualified newspaper published in the county in this state in which the respondent was last known to practice or reside. The service shall be deemed complete 21 days after the first publication. Personal service of the order without the state, proved by the affidavit of the person making the service, sworn to before a person authorized to administer an oath, shall have the same effect as service by publication. Proof of service shall be filed with this Court. If the respondent fails to respond to the order to show cause, this Court may proceed under Rule 15.

(d) Reciprocal discipline. Upon learning from any source that a lawyer licensed to practice in Minnesota has been publicly disciplined or is subject to public disciplinary charges in another jurisdiction, the Director may commence an investigation and, without further proceedings, may file a petition for disciplinary action with this Court. A lawyer subject to such charges or discipline shall notify the Director. If the lawyer has been publicly disciplined in another jurisdiction, this Court may issue an order directing that the lawyer and the Director inform the Court within 30 days whether either or both believe the imposition of the identical discipline by this Court would be unwarranted and the reasons for that claim. Without further proceedings this Court may thereafter impose the identical discipline unless it appears that discipline procedures in the other jurisdiction were unfair, or the imposition of the same discipline would be unjust or substantially different from discipline warranted in Minnesota. If this Court determines that imposition of the identical discipline is not appropriate, it may order such other discipline or such other proceedings as it deems appropriate. Unless the Court determines otherwise, a final adjudication in another jurisdiction that a lawyer had committed certain misconduct shall establish conclusively the misconduct for purposes of disciplinary proceedings in Minnesota.

(Amended July 22, 1982; amended effective February 21, 1984; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended effective September 1, 2005; amended effective October 1, 2014.)

Rule 13. Answer to Petition for Disciplinary Action

(a) Filing. Within 20 days after service of the petition, the respondent shall file an answer in this Court, with proof of service. The answer may deny or admit any accusations or state any defense, privilege, or matter in mitigation.

(b) Failure to file. If the respondent fails to file an answer within the time provided or any extension of time this Court may grant, the petition's allegations shall be deemed admitted and this Court may proceed under Rule 15.

(Amended effective February 21, 1984; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective October 1, 2014.)

Rule 14. Hearing on Petition for Disciplinary Action

(a) Referee. This Court may appoint a referee with directions to hear and report the evidence submitted for or against the petition for disciplinary action or petition for revocation of conditional admission.

(b) Conduct of hearing before referee. Unless this Court otherwise directs, the hearing shall be conducted in accordance with the Rules of Civil Procedure applicable to district courts and the referee shall have all the powers of a district court judge.

(c) Subpoenas. The District Court of Ramsey County shall issue subpoenas. The referee shall have jurisdiction to determine all motions arising from the issuance and enforcement of subpoenas.

(d) Record. The referee shall appoint a court reporter to make a record of the proceedings as in civil cases.

(e) Referee's findings, conclusions, and recommendations. The referee shall make findings of fact, conclusions, and recommendations, file them with this Court, and notify the respondent and the Director of them. In revocation of conditional admission matters, the referee shall also notify the Director of the Board of Law Examiners. Unless the respondent or Director, within ten days, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. If either the respondent or the Director so orders a transcript, then none of the findings of fact or conclusions shall be conclusive, and either party may challenge any findings of fact or conclusions. A party ordering a transcript shall, within ten days of the date the transcript is ordered, file with the clerk of appellate courts a certificate as to transcript signed by the court reporter. The certificate shall contain the date on which the transcript was ordered, the estimated completion date (which shall not exceed 30 days from the date the transcript was ordered), and a statement that satisfactory financial arrangements have been made for the transcription. A party ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one copy for the respondent and one for the Director. A party ordering a transcript shall specify in the initial brief to the Court the referee's findings of fact, conclusions and recommendations that are disputed.

(f) Panel as referee. Upon written agreement of an attorney, the Panel Chair and the Director, at any time, this Court may appoint the Panel which is to conduct or has already conducted the probable cause hearing as its referee to hear and report the evidence submitted for or against the petition for disciplinary action. Upon such appointment, the Panel shall proceed under Rule 14 as the Court's referee, except that if the Panel considers evidence already presented at the Panel hearing, a transcript of the hearing shall be made part of the public record. The District Court of Ramsey County shall continue to have the jurisdiction over discovery and subpoenas in Rule 9(d) and (h).

(g) Hearing before Court. This Court within thirty days of the referee's findings, conclusions and recommendations, shall set a time for hearing before this Court. The order shall specify times for briefs and oral arguments. In all matters in which the Director seeks discipline, the cover of the main brief of the Director shall be blue; the main brief of the respondent, red; and any reply brief shall be gray. In a matter in which reinstatement is sought pursuant to Rule 18 of these Rules, the cover of the respondent's main brief shall be blue; that of the main brief of the Director, red; and that of any reply brief, gray. The matter shall be heard upon the record, briefs, and arguments.

(Amended October 22, 1984; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended effective for lawyer discipline matters pending or commenced after August 1, 1999; amended effective September 1, 2005; amended effective July 1, 2009.)

Rule 15. Disposition; Protection of Clients

(a) Disposition. Upon conclusion of the proceedings, this Court may:

(1) Disbar the lawyer;

(2) Suspend the lawyer indefinitely or for a stated period of time;

(3) Order the lawyer to pay costs;

(4) Place the lawyer on a probationary status for a stated period, or until further order of this Court, with such conditions as this Court may specify and to be supervised by the Director;

(5) Reprimand the lawyer;

(6) Order the lawyer to successfully complete within a specified period such written examination as may be required of applicants for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility;

(7) Make such other disposition as this Court deems appropriate;

(8) Require the lawyer to pay costs and disbursements; in addition, in those contested cases where the lawyer has acted in the proceedings in bad faith, vexatiously, or for oppressive reasons, order the lawyer to pay reasonable attorney fees;

(9) Dismiss the petition for disciplinary action or petition for revocation of conditional admission, in which case the Court's order may denominate the lawyer by number or randomly selected initials and may direct that the remainder of the record be sealed; or

(10) Revoke, modify or extend a conditional admission agreement.

(b) Protection of clients. When a lawyer is disciplined or permitted to resign, this Court may issue orders as may be appropriate for the protection of clients or other persons.

(c) Petition for rehearing. A petition for rehearing may be filed regarding an order of the Court under this rule, by following the procedures of Minn. R. Civ. App. P. 140. The filing of a petition for rehearing shall not stay this Court's order.

(Amended October 16, 1981; amended July 22, 1982; amended September 1, 1982; amended April 26, 1983; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended effective September 1, 2005; amended effective July 1, 2009.)

Rule 16. Temporary Suspension Pending Disciplinary Proceedings

(a) Petition for temporary suspension. In any case where the Director files or has filed a petition under Rule 12, if it appears that a continuation of a lawyer's authority to practice law pending final determination of the disciplinary proceeding poses a substantial threat of serious harm to the public, the Director may file with this Court a petition for suspension of the lawyer pending final determination of the disciplinary proceeding, with proof of service. The petition shall set forth facts as may constitute grounds for the suspension and may be supported by a transcript of evidence taken by a Panel, court records, documents or affidavits.

(b) Service. The Director shall cause the petition to be served upon the lawyer in the same manner as a petition for disciplinary action.

(c) Answer. Within 20 days after service of the petition or such shorter time as this Court may order, the lawyer shall file in this Court an answer to the petition for temporary suspension, with proof of service. If the lawyer fails to do so within that time or any extension of time this Court may grant, the petition's allegations shall be deemed admitted and this Court may enter an order suspending the lawyer pending final determination of disciplinary proceedings. The answer may be supported by a transcript of any evidence taken by the Panel, court records, documents, or affidavits.

(d) Hearing; disposition. If this Court after hearing finds a continuation of the lawyer's authority to practice law poses a substantial threat of serious harm to the public, it may enter an order suspending the lawyer pending final determination of disciplinary proceedings.

(e) Interim suspension. Upon a referee disbarment recommendation, the lawyer's authority to practice law shall be suspended pending final determination of the disciplinary proceeding, unless the referee directs otherwise or the Court orders otherwise.

(Amended July 22, 1982; amended February 21, 1984; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended to govern all lawyer disciplinary actions commenced on or after January 1, 1995; amended effective October 1, 2014.)

Rule 17. Felony Conviction

(a) Duty of the court administrator. Whenever a lawyer is convicted of a felony, the court administrator shall send the Director a certified copy of the judgment of conviction.

(b) Other cases. Nothing in these Rules precludes disciplinary proceedings, where appropriate, in case of conviction of an offense not punishable by incarceration for more than one year or in case of unprofessional conduct for which there has been no criminal conviction or for which a criminal conviction is subject to appellate review.

(Amended July 22, 1982; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989.)

Rule 18. Reinstatement

(a) Petition for reinstatement. A copy of a petition for reinstatement to practice law shall be served upon the Director. The petition, with proof of service, shall then be filed with this Court. Together with the petition served upon the Director's Office, a petitioner seeking reinstatement shall pay to the Director a fee in the same amount as that required by Rule 12(B), Rules for Admission to the Bar, for timely filings. Applications for admission to the bar following a revocation

of conditional admission shall be filed with the Board of Law Examiners pursuant to Rule 16, Rules for Admission to the Bar.

(b) Investigation; report.

(1) The Director shall publish an announcement of the petition for reinstatement in a publication of general statewide circulation to attorneys soliciting comments regarding the appropriateness of the petitioner's reinstatement. Any comments made in response to such a solicitation shall be absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person making the statement.

(2) The Director shall investigate and report the Director's conclusions to a Panel.

(c) Recommendation. The Panel may conduct a hearing and shall make its findings of fact, conclusions, and recommendations. The recommendation shall be served upon the petitioner and filed with this Court. Unless the petitioner or Director, within ten days of the date of service, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. If either the petitioner or the Director so orders a transcript, then none of the findings of fact or conclusions shall be conclusive, and either party may challenge any findings of fact or conclusions. A party ordering a transcript shall, within ten days of the date the transcript is ordered, file with the clerk of the appellate courts a certificate as to transcript signed by the court reporter. The certificate shall contain the date on which the transcript was ordered, the estimated completion date (which shall not exceed 30 days from the date the transcript was ordered), and a statement that satisfactory financial arrangements have been made for the transcription. A party ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one for the petitioner and one for the Director. A party ordering a transcript shall specify in the initial brief to the Court the Panel's findings of fact, conclusions, and recommendations that are disputed.

(d) Hearing before Court. There shall be a hearing before this Court on the petition unless otherwise ordered by this Court. Should this Court determine further consideration on the petition is necessary, this Court may appoint a referee and the same procedure shall be followed as under Rule 14, except subdivision (f) will not apply.

(e) General requirements for reinstatement.

(1) Unless such examination is specifically waived by this Court, no lawyer, after having been disbarred by this Court, may petition for reinstatement until the lawyer shall have successfully completed such written examinations as may be required of applicants for admission to the practice of law by the State Board of Law Examiners.

(2) No lawyer ordered reinstated to the practice of law after having been suspended or transferred to disability inactive status by this Court, and after petitioning for reinstatement under subdivision (a), shall be effectively reinstated until the lawyer shall have successfully completed such written examination as may be required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility.

(3) Unless specifically waived by this Court, any lawyer suspended for a fixed period of 90 days or less, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), must, within one year from the date of the suspension order, successfully complete such written examination as may be required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. Except upon motion and for good cause shown, failure to successfully complete this examination shall result in automatic suspension of the lawyer effective one year after the date of the original suspension order.

(4) Unless specifically waived by this Court, no lawyer shall be reinstated to the practice of law following the lawyer's resignation, suspension, disbarment, or transfer to disability inactive status by this Court until the lawyer shall have satisfied (1) the requirements imposed under the rules for Continuing Legal Education on members of the bar as a condition to a change from a restricted to an active status; and (2) any subrogation claim against the lawyer by the Client Security Board.

(f) Reinstatement by affidavit. Unless otherwise ordered by this Court, subdivisions (a) through (d) shall not apply to lawyers who have been suspended for a fixed period of 90 days or less. Such a suspended lawyer, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), may apply for reinstatement by filing an affidavit with the Clerk of Appellate Courts and the Director, stating that the suspended lawyer has complied with Rules 24 and 26 of these rules, is current in Continuing Legal Education requirements, and has complied with all other conditions for reinstatement imposed by the Court. After receiving the lawyer's affidavit, the Director shall promptly file a proposed order and an affidavit regarding the lawyer's compliance or lack thereof with the requirements for reinstatement. The lawyer may not resume the practice of law unless and until this Court issues a reinstatement order.

(Amended October 16, 1981; amended February 21, 1984; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended effective for lawyer discipline matters pending or commenced after August 1, 1999; amended effective September 1, 2005; amended effective July 1, 2009; amended effective October 1, 2014; amended effective January 1, 2017.)

Rule 19. Effect of Previous Proceedings

(a) Criminal conviction. A lawyer's criminal conviction in any American jurisdiction, even if upon a plea of nolo contendere or subject to appellate review, is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted. The same is true of a conviction in a foreign country if the facts and circumstances surrounding the conviction indicate that the lawyer was accorded fundamental fairness and due process.

(b) Disciplinary proceedings.

(1) Conduct previously considered and investigated where discipline was not warranted. Conduct considered in previous lawyer disciplinary proceedings of any jurisdiction, including revocation of conditional admission proceedings, is inadmissible if it was determined in the proceedings that discipline was not warranted, except to show a pattern of related conduct the cumulative effect of which constitutes an ethical violation, except as provided in subsection (b)(2).

(2) Conduct previously considered where no investigation was taken and discipline was not warranted. Conduct in previous lawyer disciplinary proceedings of any jurisdiction, including revocation of conditional admission proceedings which was not investigated, is admissible, even if it was determined in the proceedings without investigation that discipline was not warranted.

(3) Previous finding. A finding in previous disciplinary proceedings that a lawyer committed conduct warranting discipline or revocation, modification or extension of conditional admission is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct.

(4) Previous discipline. The fact that the lawyer received discipline in previous disciplinary proceedings, including revocation, modification or extension of conditional admission, is admissible to determine the nature of the discipline to be imposed, but is not admissible to prove that a violation occurred and is not admissible to prove the character of the lawyer in order to show that the lawyer

acted in conformity therewith; provided, however, that evidence of such prior discipline may be used to prove:

(i) A pattern of related conduct, the cumulative effect of which constitutes a violation;

(ii) The current charge (e.g., the lawyer has continued to practice despite suspension);

(iii) For purposes of impeachment (e.g., the lawyer denies having been disciplined before); or

(iv) Motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Stipulation. Unless the referee or this Court otherwise directs or the stipulation otherwise provides, a stipulation before a Panel remains in effect at subsequent proceedings regarding the same matter before the referee or this Court.

(d) Panel proceedings. Subject to the Rules of Civil Procedure for District Courts and the Rules of Evidence, evidence obtained through a request for admission, deposition, or hearing under Rule 9 is admissible in proceedings before the referee or this Court.

(e) Admission. Subject to the Rules of Evidence, a lawyer's admission of unprofessional conduct or of violating a conditional admission agreement is admissible in proceedings under these Rules.

(Amended January 12, 1981; amended July 22, 1982; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective August 1, 1999; amended effective September 1, 2005.)

Rule 20. Confidentiality; Expunction

(a) General rule. The files, records, and proceedings of the District Committees, the Board, and the Director, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of a lawyer, shall be deemed confidential and shall not be disclosed, except:

(1) As between the Committees, Board and Director in furtherance of their duties;

(2) After probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules;

(3) As between the Director and a lawyer admission or disciplinary authority of another jurisdiction in which the lawyer affected is admitted to practice or seeks to practice;

(4) Upon request of the lawyer affected, the file maintained by the Director shall be produced including any district committee report; however, the Director's work product shall not be required to be produced, nor shall a member of the District Ethics Committee or the Board, the Director, or the Director's staff be subject to deposition or compelled testimony, except upon a showing to the Court issuing the subpoena of extraordinary circumstance and compelling need. In any event, the mental impressions, conclusions, opinions and legal theories of the Director and Director's staff shall remain protected;

(5) If the complainant is, or at the time of the actions complained of was, the lawyer's client, the lawyer shall furnish to the complainant copies of the lawyer's written responses to investigation requests by the Director and District Ethics Committee, except that insofar as a response does not relate to the client's complaint or involves information as to which another client has a privilege, portions may be deleted;

(6) Where permitted by this Court; or

(7) Where required or permitted by these Rules.

(8) Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Committee or Board members made in furtherance of their duties.

(9) As between the Director and the Client Security Board in furtherance of their duties to investigate and consider claims of client loss allegedly caused by the intentional dishonesty of a lawyer.

(10) As between the Director and the Board on Judicial Standards or its executive secretary in furtherance of their duties to investigate and consider conduct of a judge that occurred prior to the judge assuming judicial office.

(11) As between the Director and the Board of Law Examiners in furtherance of their duties under these rules.

(b) Special matters. The following may be disclosed by the Director:

(1) The fact that a matter is or is not being investigated or considered by the Committee, Director, or Panel;

(2) With the affected lawyers consent, the fact that the Director has determined that discipline is not warranted;

(3) The fact that the Director has issued an admonition;

(4) The Panel's disposition under these Rules;

(5) The fact that stipulated probation has been approved under Rule 8(d)(3) or 8(e);

(6) The fact that the terms of a conditional admission have been modified or extended under Rule 8(d)(5);

(7) Information to other members of the lawyer's firm necessary for protection of the firm's clients or appropriate for exercise of responsibilities under Rules 5.1 and 5.2, Rules of Professional Conduct.

Notwithstanding any other provision of this rule, the records of matters in which it has been determined that discipline is not warranted shall not be disclosed to any person, office or agency except to the lawyer and as between Committees, Board, Director, Referee or this Court in furtherance of their duties under these Rules.

(c) Records after determination of probable cause or commencement of referee or Court proceedings. Except as ordered by the referee or this Court and except for work product, after probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules, the files, records, and proceedings of the District Committee, the Board, and the Director relating to the matter are not confidential.

(d) Referee or Court proceedings. Except as ordered by the referee or this Court, the files, records, and proceedings before a referee or this Court under these Rules are not confidential.

(e) Expunction of records. The Director shall expunge records relating to dismissed complaints as follows:

(1) Destruction schedule. All records or other evidence of the existence of a dismissed complaint shall be destroyed three years after the dismissal;

(2) Retention of records. Upon application by the Director to a Panel Chair chosen in rotation, for good cause shown and with notice to the respondent and opportunity to be heard, records which should otherwise be expunged under this Rule may be retained for such additional time not exceeding three years as the Panel Chair deems appropriate.

(f) Advisory opinions, overdraft notification program files, and probation files. The files, notes, and records maintained by the Director relating to advisory opinions, trust account overdraft notification, and monitoring of lawyers on probation shall be deemed confidential and shall not be disclosed except:

(1) in the course of disciplinary proceedings arising out of the facts or circumstances of the advisory opinion, overdraft notification, or probation; or

(2) upon consent of the lawyer who requested the advisory opinion or was the subject of the overdraft notification or probation.

(Amended April 26, 1983; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended effective March 30, 1999; amended effective September 1, 2005; amended effective July 1, 2009.)

Advisory Committee Comment - 1999 Amendment

Rule 20 has been modified to permit the exchange of information between the two disciplinary boards and their staff in situations involving conduct of a judge that occurred prior to the judge assuming judicial office. See also R. L. Prof. Resp. 20(a)(10). Both the Board on Judicial Standards and the Lawyers Professional Responsibility Board have jurisdiction in such cases. R. Bd. Jud. Std. 2(b); R. L. Prof. Resp. 6Z.

Rule 21. Privilege; Immunity

(a) Privilege. A complaint or charge, or statement relating to a complaint or charge, of a lawyer's alleged unprofessional conduct, to the extent that it is made in proceedings under these Rules, or to the Director or a person employed thereby or to a District Committee, the Board or this Court, or any member thereof, is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the complaint, charge, or statement.

(b) Immunity. Board members, other Panel members, District Committee members, the Director, and the Director's staff, and those entering into agreements with the Director's Office to supervise probations, shall be immune from suit for any conduct in the course of their official duties.

(Amended May 29, 1980; amended July 22, 1982; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991.)

Rule 22. Payment of Expenses

Payment of necessary expenses of the Director and the Board and its members incurred from time to time and certified to this Court as having been incurred in the performance of their duties under these Rules and the compensation of the Director and persons employed by the Director under these Rules shall be made upon vouchers approved by this Court from its funds now or hereafter to be deposited to its credit with the State of Minnesota or elsewhere.

(Amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989.)

Rule 23. Supplemental Rules

The Board and each District Committee may adopt rules and regulations, not inconsistent with these Rules, governing the conduct of business and performance of their duties.

(Amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989.)

Rule 24. Costs and Disbursements

(a) Costs. Unless this Court orders otherwise or specifies a higher amount, the prevailing party in any disciplinary proceeding or revocation of conditional admission proceeding decided by this Court shall recover costs in the amount of $900.

(b) Disbursements. Unless otherwise ordered by this Court, the prevailing party in any disciplinary proceedings or revocation of conditional admission proceedings decided by this Court shall recover, in addition to the costs specified in subdivision (a), all disbursements necessarily incurred after the filing of a petition for disciplinary action or a petition for revocation of conditional admission under Rule 12. Recoverable disbursements in proceedings before a referee or this Court shall include those normally assessed in appellate proceedings in this Court together with those which are normally recoverable by the prevailing party in civil actions in the district court.

(c) Time and manner for taxation of costs and disbursements. The procedures and times governing the taxation of costs and disbursements and for making objection to same and for appealing from the clerk's taxation shall be as set forth in the Rules of Civil Appellate Procedure.

(d) Judgment for costs and disbursements. Costs and disbursements taxed under this Rule shall be inserted in the judgment of this Court in any disciplinary proceeding wherein suspension, disbarment, or revocation of conditional admission is ordered. No suspended attorney shall be permitted to resume practice and no disbarred attorney may file a petition for reinstatement if the amount of the costs and disbursements taxed under this Rule has not been fully paid. A lawyer whose conditional admission has been revoked may not file an application for admission to the bar until the amount of the costs and disbursements taxed under this Rule has been fully paid.

(Added effective May 29, 1980; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective June 13, 1996; amended effective September 1, 2005.)

Rule 25. Required Cooperation

(a) Lawyer's duty. It shall be the duty of any lawyer who is the subject of an investigation or proceeding under these Rules to cooperate with the District Committee, the Director or the Director's staff, the Board, or a Panel, by complying with reasonable requests, including requests to:

(1) Furnish designated papers, documents or tangible objects;

(2) Furnish in writing a full and complete explanation covering the matter under consideration;

(3) Appear for conferences and hearings at the times and places designated;

(4) Execute authorizations and releases necessary to investigate alleged violations of a conditional admission agreement.

Such requests shall not be disproportionate to the gravity and complexity of the alleged ethical violations. The District Court of Ramsey County shall have jurisdiction over motions arising from

Rule 25 requests. The lawyer shall be denominated by number or randomly selected initials in any District Court proceeding. Copies of documents shall be permitted in lieu of the original in all proceedings under these Rules. The Director shall promptly return the originals to the respondent after they have been copied.

(b) Grounds of discipline. Violation of this Rule is unprofessional conduct and shall constitute a ground for discipline; provided, however, that a lawyer's challenge to the Director's requests shall not constitute lack of cooperation if the challenge is promptly made, is in good faith and is asserted for a substantial purpose other than delay.

(Added October 16, 1981; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective September 1, 2005.)

Rule 26. Duties of Disciplined, Disabled, Conditionally Admitted, or Resigned Lawyer

(a) Notice to clients in nonlitigation matters. Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, a lawyer whose conditional admission has been revoked, or a lawyer transferred to disability inactive status, shall notify each client being represented as of the date of the resignation or the order imposing discipline or transferring the lawyer to disability inactive status in a pending matter other than litigation or administrative proceedings of the lawyer's disbarment, suspension, resignation, revocation of conditional admission, or disability. The notification shall urge the client to seek legal advice of the client's own choice elsewhere, and shall include a copy of the Court's order.

(b) Notice to parties and tribunal in litigation. Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, a lawyer whose conditional admission has been revoked, or a lawyer transferred to disability inactive status, shall notify each client, opposing counsel (or opposing party acting pro se) and the tribunal involved in pending litigation or administrative proceedings as of the date of the resignation or the order imposing discipline or transferring the lawyer to disability inactive status of the lawyer's disbarment, suspension, resignation, revocation of conditional admission, or disability. The notification to the client shall urge the prompt substitution of other counsel in place of the disbarred, suspended, or resigned, disabled lawyer, or a lawyer whose conditional admission has been revoked, and shall include a copy of the Court's order.

(c) Manner of notice. Notices required by this Rule shall be sent by certified mail, return receipt requested, within ten days of the Court's order.

(d) Client papers and property. A disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall make arrangements to deliver to each client being represented in a pending matter, litigation or administrative proceeding any papers or other property to which the client is entitled.

(e) Proof of compliance. Within fifteen (15) days after the effective date of the Court's order, the disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall file with the Director an affidavit showing:

(1) That the affiant has full complied with the provisions of the order and with this Rule;

(2) All other State, Federal and administrative jurisdictions to which the affiant is admitted to practice; and

(3) The residence or other address where communications may thereafter be directed to the affiant.

Copies of all notices sent by the disbarred, suspended, resigned or disabled lawyer, or lawyer whose conditional admission has been revoked, shall be attached to the affidavit, along with proof of mailing by certified mail. The returned receipts from the certified mailing shall be provided to the Director within two (2) months of the mailing of notices.

(f) Maintenance of records. A disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall keep and maintain records of the actions taken to comply with this Rule so that upon any subsequent proceeding being instituted by or against the lawyer, proof of compliance with this Rule and with the disbarment, suspension, resignation, disability, or revocation of conditional admission order will be available.

(g) Condition of reinstatement. Proof of compliance with this Rule shall be a condition precedent to any petition or affidavit for reinstatement made by a disbarred, suspended, resigned or disabled lawyer, or to an application for admission submitted to the Board of Law Examiners after revocation of a lawyer's conditional admission.

(Added October 16, 1981; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended effective September 1, 2005; amended effective July 1, 2009.)

Rule 27. Trustee Proceeding

(a) Appointment of trustee. Upon a showing that a lawyer is unable to properly discharge responsibilities to clients due to disability, disappearance or death, or that a suspended, disbarred, resigned, or disabled lawyer, or a lawyer whose conditional admission has been revoked, has not complied with Rule 26, and that no arrangement has been made for another lawyer to discharge such responsibilities, this Court may appoint a lawyer to serve as the trustee to inventory the files of the disabled, disappeared, deceased, suspended, disbarred or resigned lawyer, or a lawyer whose conditional admission has been revoked, and to take whatever other action seems indicated to protect the interests of the clients and other affected parties.

(b) Protection of records. The trustee shall not disclose any information contained in any inventoried file without the client's consent, except as necessary to execute this Court's order appointing the trustee.

(Added October 16, 1981; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective March 1, 1991; amended effective September 1, 2005.)

Rule 28. Disability Status

(a) Transfer to disability inactive status. A lawyer whose physical condition, mental illness, mental deficiency, senility, or habitual and excessive use of intoxicating liquors, narcotics, or other drugs prevents the lawyer from competently representing clients shall be transferred to disability inactive status.

(b) Immediate transfer. This Court may immediately transfer a lawyer to disability inactive status upon proof that the lawyer has been found in a judicial proceeding to be a mentally ill, mentally deficient, incapacitated, or inebriate person.

(c) Asserting disability in disciplinary proceeding. A lawyer's assertion of disability in defense or mitigation in a disciplinary proceeding or a revocation of conditional admission proceeding shall be deemed a waiver of the doctor-patient privilege. The referee may order an examination or evaluation by such person or institution as the referee designates. If a lawyer alleges disability

during a disciplinary investigation or proceeding or a revocation of conditional admission proceeding, and therefore is unable to assist in the defense, the Director shall inform the Court of the allegation and of the Director's position regarding the allegation. The Court may:

(1) Transfer the lawyer to disability inactive status;

(2) Order the lawyer to submit to a medical examination by a designated professional;

(3) Appoint counsel if the lawyer has not retained counsel and the lawyer is financially eligible for appointed counsel. Financial eligibility shall be determined by the referee appointed by the Court to hear the disciplinary or disability petition in the same manner as eligibility for appointment of a public defender in a criminal case;

(4) Stay disciplinary proceedings or revocation of conditional admission proceedings until it appears the lawyer can assist in the defense;

(5) Direct the Director to file a petition under Rule 12;

(6) Appoint a referee with directions to make findings and recommendations to the Court regarding the disability allegation or to proceed under Rule 14;

(7) Make such or further orders as the Court deems appropriate.

(d) Reinstatement. This Court may reinstate a lawyer to active status upon a showing that the lawyer is fit to resume the practice of law. The parties shall proceed as provided in Rule 18. The lawyer's petition for reinstatement:

(1) Shall be deemed a waiver of the doctor-patient privilege regarding the incapacity; and

(2) Shall set forth the name and address of each physician, psychologist, psychiatrist, hospital or other institution that examined or treated the lawyer since the transfer to disability inactive status.

(e) Transfer following hearing. In cases other than immediate transfer to disability inactive status, and other than cases in which the lawyer asserts personal disability, this Court may transfer a lawyer to or from disability inactive status following a proceeding initiated by the Director and conducted in the same manner as a disciplinary proceeding under these Rules. In such proceeding:

(1) If the lawyer does not retain counsel, counsel may be appointed to represent the lawyer; and

(2) Upon petition of the Director and for good cause shown, the referee may order the lawyer to submit to a medical examination by an expert appointed by the referee.

(Added July 22, 1982; amended effective July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989; amended effective September 1, 2005; amended effective July 1, 2009.)

Rule 29. Ex Parte Communications

Ex parte communications to any adjudicatory body including panels, referees and this Court are strongly disfavored. Such communications should not occur except after first attempting to contact the adversary and then only if the adversary is unavailable and an emergency exists. Such communications should be strictly limited to the matter relating to the emergency and the adversary notified at the earliest practicable time of the prior attempted contact and of the ex parte communication.

(Added July 1, 1986; amended effective July 1, 1987; amended effective January 1, 1989.)

Rule 30. Administrative Suspension

(a) Upon receipt of a district court order or a report from an Administrative Law Judge or public authority pursuant to Minnesota Statutes, section 518A.66, finding that a licensed Minnesota attorney is in arrears in payment of maintenance or child support and has not entered into or is not in compliance with an approved payment agreement for such support, the Director's Office shall serve and file with the Supreme Court a motion requesting the administrative suspension of the attorney until such time as the attorney has paid the arrearages or entered into or is in compliance with an approved payment plan. The Court shall suspend the lawyer or take such action as it deems appropriate.

(b) Any attorney administratively suspended under this rule shall not practice law or hold himself or herself out as authorized to practice law until reinstated pursuant to paragraph (c). The attorney shall, within ten days of receipt of an order of administrative suspension, send written notice of the suspension to all clients, adverse counsel and courts before whom matters are pending and shall file an affidavit of compliance with this provision with the Director's Office.

(c) An attorney administratively suspended under this rule may be reinstated by filing an affidavit with supporting documentation averring that he or she is no longer in arrears in payment of maintenance or child support or that he or she has entered into and is in compliance with an approved payment agreement for payment of such support. Within 15 days of the filing of such an affidavit the Director's Office shall verify the accuracy of the attorney's affidavit and file a proposed order for reinstatement of the attorney requesting an expedited disposition.

(d) Nothing in this rule precludes disciplinary proceedings, if the attorney's conduct also violates the Minnesota Rules of Professional Conduct.

(Added effective June 13, 1996; amended effective June 24, 1996; amended effective May 14, 2010.)

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TEXT OF OPINIONS

OPINION NO. 1

The Legal Force and Effect of Opinions Issued by the State Board of Professional Responsibility

It is the policy of the State Board of Professional Responsibility to issue, from time to time, advisory opinions as to the professional conduct of lawyers, whether as a result of a specific request or its own initiative, on matters deemed important by the Board.

The Board and the Supreme Court consider these opinions as rule interpretations that guide attorneys' professional conduct even though they are not binding on the Court. See, In re Admonition Issued in Panel File No. 99-42, 621 N.W.2d 240 (Minn. 2001).

Opinions issued by the Board will be subject to change from time to time as deemed necessary by the Board, or as required by decisions of the Minnesota Supreme Court.

Adopted: October 27, 1972.

Amended: December 4, 1987; January 26, 2006.

OPINION NO. 2

Adopted: October 27, 1972.

Repealed: January 26, 2006.

OPINION NO. 3

Adopted: November 20, 1972.

Repealed: October 25, 2002.

Comment

Opinion No. 3 was adopted in 1972 and prohibited part-time judges from practicing law in the court in which the part-time judge serves. The opinion also extended the disqualification to the part-time judge's law partners and associates.

Over the past decade, amendments to the Code of Judicial Conduct codified and clarified the application of the part-time judge disqualification. See e.g., Section C of the Application of the Code of Judicial Conduct and its related comment.

In addition, Rule 1.10 of the Rules of Professional Conduct delineates the types of conflicts that are imputed to other members of a law firm. With the evolution of substantive ethics rules that more comprehensively address the issue, Opinion No. 3 became obsolete, thus necessitating its repeal.

OPINION NO. 4

Adopted: October 12, 1973.

Amended: December 4, 1987.

Repealed: October 25, 2002.

Comment

Adopted in 1973, Opinion No. 4 addressed a lawyer's withdrawal from representation for nonpayment of fees. The opinion contained res ipsa loquitur or switching burden of proof provision that placed higher burden of proof upon lawyers who failed to enter into written fee agreements with clients. Specifically, the opinion required lawyers without written fee agreements to justify their withdrawal for nonpayment of fees by proving the client's noncompliance with the oral fee arrangement by a standard of clear and convincing evidence.

The switching burden of proof provision, although laudable for its encouragement to use written fee agreements, has little, if any basis in the Rules of Professional Conduct. Without a sufficient nexus to the substantive ethics rules, this requirement appeared to be a regulation that went beyond that authorized by the Supreme Court, especially in light of the Panel File No. 99-42 decision.

OPINION NO. 5

Adopted: April 19, 1974.

Amended: December 4, 1987.

Repealed: January 26, 2006.

OPINION NO. 6

Adopted: June 26, 1974.

Repealed: January 26, 2006.

OPINION NO. 7

Payment of Compensation for Services

Adopted: June 26, 1974.

Amended: October 26, 1979.

Repealed: January 7, 1983.

OPINION NO. 8

Attorneys' Guidelines for Law Office Services by Non-lawyers

Except to the extent permitted by the Supreme Court of the State of Minnesota, (e.g., Student Practice Rules) neither law students nor any other person not duly admitted to the practice of law shall be named on pleadings under any identification.

Legal assistants, or other paralegal employees, may be listed on professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, so long as the paralegals are clearly identified as such, and so long as no false, fraudulent, misleading, or deceptive statements or claims are made concerning said paralegals, their legal status and authority, or their relationships to the firms by which they are employed. Paralegals may use business cards so identifying themselves, which cards carry the law firm's name and address.

Such a paralegal, so identified, may sign correspondence on behalf of the law firm, provided he or she does so by direction of an attorney-employer.

Non-lawyers must be supervised by an attorney who is responsible for their work. See, Rules 5.3 and 5.5 and Comments, Minnesota Rules of Professional Conduct.

Adopted: June 26, 1974.

Amended: June 18, 1980; December 4, 1987; January 26, 2006.

OPINION NO. 9

Adopted: September 10, 1976.

Amended: June 22, 1977, June 23, 1983, December 4, 1987, September 15, 1989, September 18,1998, August 1, 1999, and January 27, 2005.

Repealed: January 26, 2006.

1998 Committee Comments

In the nine years since the Lawyers Professional Responsibility Board last revised this Opinion, there have been significant changes in the ways attorneys may maintain their trust account books and records, most notably the rise of the personal computer and bookkeeping software as essential office equipment. Moreover, the Director's Office has reviewed hundreds of lawyers' trust accounts since 1990 through the administration of the overdraft notification program. This experience has given the Director insight into the most common record-keeping pitfalls and confirmed the types of records that lawyers must maintain to satisfy their ethical obligations to protect client funds.

The revised Opinion eliminates the requirement of separate cash receipts and disbursements journals, in favor of a more detailed chronological check register that records all trust account transactions, including the identity of the client and the purpose of the transaction. This simplifies manual record-keeping and comports with most software packages that allow input of all relevant information into one computer screen.

Routine monthly printing of hard copies of electronic records is required to allow reconstruction of trust account records in the event of a hardware failure. Attorneys should implement electronic backup procedures depending on the volume of activity in the trust account. For moderate to high volume trust accounts, weekly or even daily backups to floppy disks or mirrored network servers may be appropriate.

Wire transfers may be used for large denomination transactions provided that the lawyer or law firm creates the proper written authorization. The Board does not recommend that attorneys use wire transfers for transactions under $10,000; checks signed by an attorney remain the primary means of properly disbursing funds from a trust account.

OPINION NO. 10

Debt Collection Procedures

Adopted: June 22, 1977.

Amended: December 4, 1987.

Repealed: October 25, 2002.

Comment

The comprehensive set of guidelines contained in Opinion No. 10 was intended to keep a clear demarcation between the activities of law firm and nonlayer debt collection agencies. The opinion

was premised upon the notion that blurring the distinction between law firms and collection agencies could lead to abuse of debtors and adversely reflect upon the legal profession.

Since the opinion was adopted in 1977, federal and state consumer protection laws, including most notably the Fair Debt Collection Practices Act (FDCPA), have encompassed and far exceeded the regulation of collection activities proscribed by the Lawyers Board opinion.

Within the past several years, federal court rulings have made it clear that the FDCPA applies not only to collection agencies, but also lawyers. Like Opinion No. 3, this opinion became obsolete due to the evolution of more comprehensive substantive law regulations.

OPINION NO. 11

Adopted: October 26, 1979.

Repealed: January 26, 2006.

OPINION NO. 12

Adopted: May 6, 1983.

Repealed: January 26, 2006.

OPINION NO. 13

Copying Costs of Client Files, Papers and Property

Client files, papers and property, whether printed or electronically stored, shall include:

1. All papers and property provided by the client to the lawyer.

2. All pleadings, motions, discovery, memorandums, and other litigation materials which have been executed and served or filed regardless of whether the client has paid the lawyer for drafting and serving and/or filing the document(s).

3. All correspondence regardless of whether the client has paid the lawyer for drafting or sending the correspondence.

4. All items for which the lawyer has advanced costs and expenses regardless of whether the client has reimbursed the lawyer for the costs and expenses including depositions, expert opinions and statements, business records, witness statements, and other materials which may have evidentiary value.

Client files, papers and property, whether printed or electronically stored, shall not include:

1. Pleadings, discovery, motion papers, memoranda and correspondence which have been drafted, but not sent or served if the client has not paid for legal services in drafting or creating the documents.

2. In nonlitigation settings, client files, papers and property shall not include drafted but unexecuted estate plans, title opinions, articles of incorporation, contracts, partnership agreements, or any other unexecuted document which does not otherwise have legal effect, where the client has not paid the lawyer for the services in drafting the document(s).

A lawyer who has withdrawn from representation or has been discharged from representation, may charge a former client for the costs of copying or electronically retrieving the client's files, papers and property only if the client has, prior to termination of the lawyer's services, agreed in writing

to such a charge. Such copying charges must be reasonable. Copying charges which substantially exceed the charges of a commercial copy service are normally unreasonable.

A lawyer may not condition the return of client files, papers and property on payment of copying costs. Nor may the lawyer condition return of client files, papers or property upon payment of the lawyer's fee. See Rule 1.16(g), Minnesota Rules of Professional Conduct.

A lawyer may withhold documents not constituting client files, papers and property until the outstanding fee is paid unless the client's interests will be substantially prejudiced without the documents. Such circumstances shall include, but not necessarily be limited to, expiration of a statute of limitations or some other litigation imposed deadline. A lawyer who withholds documents not constituting client files, papers or property for nonpayment of fees may not assert a claim against the client for the fees incurred in preparing or creating the withheld document(s).

Adopted: June 15, 1989.

Amended: January 22, 2010.

OPINION NO. 14

Attorney Liens on Client Homesteads

Adopted: June 15, 1990.

Repealed: April 4, 2003.

Comment

Opinion No. 14 was adopted in 1990 and governed the assertion of a statutory attorney lien against a client's homestead.

The opinion was repealed due to statutory changes in the homestead exemption amount (Minnesota Statutes, section 510.02, limiting the exemption to $200,000), uncertainty in the law about waiver of homestead exemptions (Peterson v. Hinz, 605 N.W.2d 743 (Minn. Ct. App. 1986)) and amendments in 2002 to the Minnesota Attorney Lien Statute (Minnesota Statutes 2002, section 481.13).

Lawyers who see the need to file attorney liens against real property should carefully review the recently amended attorney lien statute (Minnesota Statutes 2002, section 481.13). Recent changes include time limits for filing attorney liens, a notice to the property owner requirement, and the automatic expiration of attorney liens that are not pursued within one year of filing.

OPINION NO. 15

Adopted: September 13, 1991.

Amended: August 1, 1999.

Repealed: January 26, 2006.

OPINION NO. 16

Interest and Late Charges on Attorneys Fees

Adopted: March 26, 1993.

Repealed: October 25, 2002.

Comment

Opinion No. 16 created a safe harbor from lawyer discipline prosecution for de minimis violations of Truth-in-Lending (TIL) violations associated with interest assessed by lawyers on past due legal fees.

In short, lawyers who charged six percent or less without disclosure in a written fee agreement, or eight percent or less disclosed in a written fee agreement, were exempt from lawyer discipline for noncompliance with TIL disclosure requirements under the opinion. Attorneys who charged interest outside of the opinion's guidelines remained subject to lawyer discipline prosecution for TIL disclosure violations.

Opinion No. 16's connection to the Rules of Professional Conduct was the reasonable fee requirements of Rule 1.5(a). The opinion postulated that the fee charged was unreasonable if the interest charged was usurious or in violation of TIL because required disclosures were not made. However, the opinion's safe harbor provision, which used the rate of interest charged to draw the line between de minimis and significant TIL violations, was based upon prosecutorial discretion standards and did not originate from any authority in the Rules of Professional Conduct.

OPINION NO. 17

Accepting Gratuities from Court Reporting Services and Other Similar Services

A lawyer ought not to accept, or to permit any nonlawyer employee to accept, a gratuity offered by a court reporting service or other similar service for which a client is expected to pay unless the client consents after consultation. However, a lawyer may accept nominal gifts, such as pens, coffee mugs, and other similar advertising-type gifts without consent of the client. See Rules 1.4, 1.5(a), 1.8(f)(1) and 5.3, Minnesota Rules of Professional Conduct (MRPC). See also Rule 1.0(c), MRPC.

Adopted: June 18, 1993.

Amended: January 26, 2006.

OPINION NO. 18

Secret Recordings of Conversations

Adopted: September 20, 1996.

Repealed: April 18, 2002.

Comment

At its April 18, 2002 meeting the Lawyers Professional Responsibility Board repealed Opinion No. 18 which made it unethical for lawyers to secretly record conversations with others. The repeal of Opinion No. 18 followed the lead of the American Bar Association in changing its longstanding position condemning the surreptitious, but legal, recording of conversations by lawyers. In June 2001, the ABA issued Formal Ethics Opinion 01-422, which withdrew its previous opinion (Formal Opinion 337) that had been in effect since 1974 prohibiting secret recording.

Minnesota Lawyers Board Opinions for the most part constitute interpretations or clarifications of the Minnesota Rules of Professional Conduct. Opinion No. 18 was premised upon the belief that secret recording of conversations by lawyers was inherently deceitful, and therefore unethical except in the limited circumstances enumerated in the Opinion. The Comment to Opinion No. 18 relied principally upon the ABA opinion from 1977 for the proposition that secret recording was inherently deceitful and therefore violated the ethical standards.

The Minnesota Rules of Professional Conduct generally prohibit lawyers from engaging in conduct that involves deceit. See Rule 8.4(c). A number of states, like Minnesota, have since 1974, issued ethics opinions concluding that secret recording was deceitful and therefore unethical. However, given the ABA's recent change of heart, and its rationale, the Minnesota Lawyers Board was doubtful about whether secret recording by itself continued to fall clearly within the deceit proscription of Rule 8.4(c). It was this doubt that led the Board to withdraw or repeal Opinion No. 18.

In repealing the Opinion, the Board and its Opinion Committee echoed the concerns expressed by the ABA. Lawyers should be aware that secret recording is illegal in some states and therefore prohibited by Rule 4.4. Moreover, lawyers who falsely deny recording conversations will be subject to discipline under Rules 4.1 and 8.4(c). And finally, although it may not be unethical to record client conversations, except in very limited circumstances (e.g., client is making criminal threats to the lawyer) it is certainly inadvisable to do so without disclosure.

OPINION NO. 19

Using Technology to Communicate Confidential Information to Clients

A lawyer may use technological means such as electronic mail (e-mail) and cordless and cellular telephones to communicate confidential client information without violating Rule 1.6, Minnesota Rules of Professional Conduct (MRPC). Such use is subject to the following conditions:

1. E-mail without encryption may be used to transmit and receive confidential client information;

2. Digital cordless and cellular telephones may be used by a lawyer to transmit and receive confidential client information when used within a digital service area;

3. When the lawyer knows, or reasonably should know, that a client or other person is using an insecure means to communicate with the lawyer about confidential client information, the lawyer shall consult with the client about the confidentiality risks associated with inadvertent interception and obtain the client's consent.

Adopted: January 22, 1999.

Amended: January 22, 2010.

Comment (2010)

A lawyer may not knowingly reveal a confidence or secret of a client. Rule 1.6(a)(1). A lawyer should exercise care to prevent unintended disclosure. See Comment to Rule 1.6. For example, the lawyer should avoid professional discussions in the company of persons to whom the attorney-client privilege does not extend. Id. Similarly, a lawyer should take reasonable steps to prevent interception or unintended disclosure of confidential communications. All communication carries with it some such risk, for example by eavesdropping, wiretapping, or theft of mail. The precautions to be taken by a lawyer depend on the circumstances, including the sensitivity of the information, the manner of communication, the apparent risks of interception or unintended disclosure, and the client's wishes.

The purpose of this opinion is to address concerns that certain devices or methods may not be used by lawyers to communicate client confidences or secrets because they do not guarantee security. The committee believes absolute security is not required, and that the use of new technology is subject to the same analysis as the use of more traditional methods of communication.

This opinion reflects the prevalent view of other states and technology experts, that communications by facsimile, e-mail, and digital cordless or cellular phones, like those by mail and conventional corded telephone, generally are considered secure; their interception involves intent, expertise, and violation of federal law. Some states have required client consent or encryption for the use of e-mail, but the majority of recent state ethics opinions sanction the use of e-mail without such requirements. The committee finds the reasoning of the latter opinions persuasive.

The opinion intentionally omits facsimile machines, which typically transmit data over conventional telephone lines. With facsimile machines, the concerns are less with interception than with unintended dissemination of the communication at its destination, where the communication may be received in a common area of the workplace or home and may be read by persons other than the intended recipient. The Director has received client complaints involving such situations and cautions lawyers to take reasonable precautions to prevent unintended dissemination. Similar concerns may be raised by voice-mail and answering machine messages.

OPINION NO. 20

Use of the Word "Associates" in a Law Firm Name

The use of the word "Associates" or the phrase "& Associates" in a law firm name, letterhead, or other professional designation is false and misleading if the use conveys the impression the law firm has more attorneys practicing law in the firm than is actually the case.

Adopted: June 18, 2009.

Comment

Subject to qualifications below, the use of the word "Associates" in a law firm name, letterhead, or other professional designation -- such as "Doe Associates" -- is false and misleading if there are not at least two licensed attorneys practicing law with the firm. Similarly, the use of the phrase "& Associates" in a firm name, letterhead, or other professional designation -- such as "Doe & Associates" -- is false and misleading if there are not at least three licensed attorneys practicing law with the firm.

Rule 7.5(a), Minnesota Rules of Professional Conduct ("MRPC"), states:

> *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 ... is not otherwise in violation of Rule 7.1.*

Comment 1 to Rule 7.5, MRPC, states, in pertinent part, that "the use of trade names ... is acceptable so long as it is not misleading."

Rule 7.1, MRPC, states:

> *A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.*

Comment 2 to Rule 7.1, MRPC, provides:

> *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.

While the word "Associates" and the phrase "& Associates" undoubtedly have other meanings and connotations in other contexts, in the practice of law the word and the phrase have been used and are perceived as referring to an attorney practicing law in a law firm. See In re Sussman, 405 P.2d 355, 356 (Or. 1965) ("Principally through custom the word ["associates"] when used on the letterheads of law firms has come to be regarded as describing those who are employees of the firm. Because the word has acquired this special significance in connection with the practice of law the use of the word to describe lawyer relationships other than that of employer-employee is likely to be misleading."); St. B. of N.M. Ethics Advisory Comm., Formal Op. 2006-1 (2006) ("It is well accepted in the legal community that an 'associate' is an attorney that works for a firm. 'Associates,' at least in the legal context, do not include support staff such as legal assistants or investigators."); Ass'n of the B. of the City of N.Y. Comm. on Prof'l & Jud. Ethics, Formal Op. 1996-8 (1996), 1996 WL 416301 ("[T]he term ['associate'] has been interpreted by courts and other ethics committees to mean a salaried lawyer-employee who is not a partner of a firm."); Utah St. B. Ethics Advisory Op. Comm., Op. 04-03 (2004), 2004 WL 1304775 ("We believe that, if a member of the public examined a firm name such as 'John Doe & Associates," he would conclude that John Doe works regularly with at least two other lawyers.").

While some members of the public may care little about the number of attorneys practicing law at a firm, clearly some members of the public seeking legal counsel do care whether there is more than one attorney at a firm available to provide legal services. "A client may wish to be represented by a law firm comprised of several or many lawyers, and the implications of the law firm name may affect the client's decision. Any communication that suggests multiple lawyers creates the appearance that the totality of the lawyers of the law firm could and would be available to render legal counsel to any prospective client ...." Cal. St. B. Standing Comm. on Prof'l Responsibility & Conduct, Formal Op. 1986-90 (1986), 1986 WL 69070 (opining that solo practitioners may not ethically advertise using a group trade name such as "XYZ Associates" unless the advertisement affirmatively discloses they are solo practitioners). A law firm name which suggests there are multiple attorneys to service a client's needs when there is only one attorney is inherently misleading.

The Board's opinion is consistent with decisions and ethics opinions from other jurisdictions which have held that the use of "associates" in the name of a law firm with one practicing lawyer is false and misleading. See, e.g., In re Mitchell, 614 S.E.2d 634 (S.C. 2005) (holding a solo practitioner made false and misleading communications by using the word "associates" in his form name); In re Brandt, 670 N.W.2d 552, 554-55 (Wis. 2003) (solo practitioner holding himself out as "Brandt & Associates" was in violation of ethics rule prohibiting false and misleading communications); Portage County B. Ass'n v. Mitchell, 800 N.E.2d 1106 (Ohio 2003) (solo practitioner engaged in misleading conduct by holding himself out as "Mitchell and Associates"); Office of Disciplinary Counsel v. Furth, 754 N.E.2d 219, 224, 231 (Ohio 2001) (a solo practitioner's use of letterhead referring to his firm as "Tom Furth and Associates, Attorneys & Counselors at Law" was misleading); S.C. B. Ethics Advisory Comm., Op. 05-19 (2005), 2005 WL 3873354 (opining that a solo practitioner's use of a firm name such as "John Doe and Associates, P.A." is misleading); Utah St. B. Ethics Advisory Op. Comm., Op. 138 (1994), 1994 WL 579848 ("[A] sole practitioner may not use a firm name of the type 'Doe & Associates' if he has no associated attorneys, even if the firm formerly had such associates or employs one or more associated nonlawyers such as paralegals or investigators.").

The use of "Associates" or "& Associates" in a firm name, letterhead, or other professional designation by lawyers who share office space or who associate with other lawyers on a particular legal matter but who do not otherwise practice together as a law firm is false and misleading.

Whether or not a law firm name using the word "Associates" or the phrase "& Associates" is false and misleading will depend on the particular facts and circumstances of each case. For example, there may be circumstances where three attorneys with a law firm name such as "Doe & Associates" may lose one of the firm's attorneys. In that event, if another attorney joins the firm within a reasonable period of time thereafter, or if the firm reasonably and objectively anticipates another attorney joining the firm within a reasonable period of time, it is not false or misleading for the firm to continue using "& Associates" in its name during the interim period. If neither circumstance exists, the continued use of "& Associates" would be considered false and misleading. In addition, there may be circumstances where one or more of the attorneys practicing with a firm may be working part-time. As long as the requisite minimum number of attorneys, part-time or otherwise, regularly and actively practice with the firm, the use of "Associates" or "& Associates" would not be considered false or misleading.

The proper use of "Associates" or "& Associates" in a firm name, letterhead, or other professional designation previously has not been the subject of guidance from the Board. Therefore, the Office of Lawyers Professional Responsibility will defer invoking this opinion in disciplinary proceedings under Rules 7.1 and 7.5, MRPC, until January 1, 2010. For the same reason, to the extent a lawyer has already contracted for an advertisement or other promotional material using a name contrary to Opinion No. 20, the continued availability of the advertisement or other material for the duration of the contract term should not be the basis for discipline.

OPINION NO. 21

A Lawyer's Duty to Consult with a Client About the Lawyer's Own Malpractice

A lawyer who knows that the lawyer's conduct could reasonably be the basis for a non-frivolous malpractice claim by a current client that materially affects the client's interests has one or more duties to act under the Minnesota Rules of Professional Conduct. The requirements of Rules 1.4 and 1.7 are implicated in such a circumstance and the lawyer must determine what actions may be required under the Rules, with particular attention to Rules 1.4 and 1.7.

Since the possibility of a malpractice claim that arises during representation may cause a lawyer to be concerned with the prospect of legal liability for the malpractice, the provisions of Rule 1.7 dealing with a "concurrent conflict of interest" must be considered to determine whether the personal interest of the lawyer poses a significant risk that the continued representation of the client will be materially limited.[1] Under Rule 1.7 the lawyer must withdraw from continued representation unless circumstances giving rise to an exception are present.[2] Assuming continued representation is not otherwise prohibited, to continue the representation the lawyer must reasonably believe he or she may continue to provide competent and diligent representation.[3] If so, the lawyer must obtain the client's "informed consent," confirmed in writing, to the continued representation.[4] Whenever the rules require a client to provide "informed consent," the lawyer is under a duty to promptly disclose to the client the circumstances giving rise to the need for informed consent.[5] In this circumstance, "informed consent" requires that the lawyer communicate adequate information and explanation about the material risks of and reasonably available alternatives to the continued representation.[6]

Regardless of whether the possibility of a malpractice claim creates a conflict of interest under Rule 1.7, the lawyer also has duties of communication with the client under Rule 1.4 that may apply. When the lawyer knows the lawyer's conduct may reasonably be the basis for a non-frivolous malpractice claim by a current client that materially affects the client's interests, the lawyer shall inform the client about that conduct to the extent necessary to achieve each of the following objectives:

(1) keeping the client reasonably informed about the status of the representation,[7]

(2) permitting the client to make informed decisions regarding the representation,[8]

(3) assuring reasonable consultation with the client about the means by which the client's objectives are to be accomplished.[9]

Adopted: October 2, 2009.

[1] Rule 1.7(a)(2).

[2] Rule 1.7(a)

[3] Rule 1.7(b)(1) and (2).

[4] Rule 1.7(b)(4).

[5] Rule 1.4(a)(1).

[6] Rule 1.0(f).

[7] Rule 1.4(a)(3).

[8] Rule 1.4(b).

[9] Rule 1.4(a)(2).

Comment

The issue of when and what to say to a client when a lawyer knows that the lawyer's conduct described in Opinion 21 could reasonably be expected to be the basis for a malpractice claim is difficult and may create inherent conflicts. The Board is issuing Opinion No. 21 to apprise the Bar of the Board's position on the matter and to provide guidance to lawyers who may confront the issue.

In consulting with the current client about the possible malpractice claim, the lawyer should bear in mind Comment 5 to Rule 1.4, which provides that "[t]he 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."

Other jurisdictions have recognized a lawyer's ethical duty to disclose to the client conduct which may constitute malpractice. See, e.g., Tallon v. Comm. on Prof'l Standards, 447 N.Y.S.2d 50, 51 (App. Div. 1982) ("An attorney has a professional duty to promptly notify his client of his failure to act and of the possible claim his client may thus have against him."); Colo. B. Ass'n Ethics Comm., Formal Op. 113 (2005) ("When, by act or omission, a lawyer has made an error, and that error is likely to result in prejudice to a client's right or claim, the lawyer must promptly disclose the error to the client."); Wis. St. B. Prof'l Ethics Comm., Formal Op. E-82-12 ("[A]n attorney is obligated to inform his or her client that an omission has occurred which may constitute malpractice and that the client may have a claim against him or her for such an omission."); N.Y. St. B. Ass'n Comm. on Prof'l Ethics, Op. 734 (2000), 2000 WL 33347720 (Generally, an attorney "has an obligation to report to the client that [he or she] has made a significant error or omission that may give rise to a possible malpractice claim."); N.J. Sup. Ct. Advisory Comm. on Prof'l Ethics, Op. 684 ("The Rules of Professional Conduct still require an attorney to notify the client that he or she may have a legal malpractice claim even if notification is against the attorney's own interest.").

In re SRC Holding Corp., 352 B.R. 103 (Bankr. D. Minn. 2006), aff'd in part and rev'd in part In re SRC Holding Corp., 364 B.R. 1 (D. Minn. 2007), reversed Leonard v. Dorsey &Whitney LLP, 553 F.3d 609 (8th Cir. 2009) discuss certain matters addressed in Opinion 21. In Leonard, the

Eighth Circuit held that the bankruptcy court had relied too heavily on ethics rules in determining whether the law firm had violated a legal duty to consult with its client about the law firm's possible malpractice. The Eighth Circuit said "[d]emonstrating that an ethics rule has been violated, by itself, does not give rise to a cause of action against the lawyer and does not give rise to a presumption that a legal duty has been breached." 553 F.3d 628. In predicting how the Minnesota Supreme Court would rule on an attorney's legal duty to consult with a client about the law firm's possible malpractice, the Eighth Circuit did not opine on a law firm's ethical duties to consult about such a claim. Recognizing the distinction, this Opinion does not opine on a law firm's legal duties to consult about such a claim.

A lawyer's obligation to report a possible malpractice claim to the lawyer's client also is discussed in a local article written by Charles E. Lundberg, entitled Self-Reporting Malpracticeor Ethics Problems, 60 Bench & B. of Minn. 8, Sept. 2003, and more recently and extensively in Benjamin P. Cooper's article, The Lawyer's Duty to Inform His Client of His Own Malpractice, 61 Baylor L. Rev. 174 (2009) and Brian Pollock's article, Surviving a Screwup, 34 ABA Litig. Mag. 2, Winter 2008.

OPINION NO. 22

A Lawyer's Ethical Obligations Regarding Metadata

A lawyer has a duty under the Minnesota Rules of Professional Conduct (MRPC), not to knowingly reveal information relating to the representation of a client, except as otherwise provided by the Rules, and a duty to act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure. *See* Minn. R. Prof. Cond. 1.1 and 1.6. The lawyer's duties with respect to such information extends to and includes metadata in electronic documents. Accordingly, a lawyer is ethically required to act competently to avoid improper disclosure of confidential and privileged information in metadata in electronic documents.

If a lawyer receives a document which the lawyer knows or reasonably should know inadvertently contains confidential or privileged metadata, the lawyer shall promptly notify the document's sender as required by Minn. R. Prof. Cond. 4.4(b).

Adopted: March 26, 2010.

Comment

Metadata Generally

Metadata, sometimes defined as data within data, is used in this Opinion to refer to information generated and embedded in electronically created documents. Metadata is generated automatically by software when an electronic document is created, accessed and modified and typically may include such information as the date the document was created, the author, and the date changes were made to the document. Other times metadata may be purposely created, such as when the author adds comments or other information visible in the document's electronic format but which may not be visible in its printed version. When electronic documents are transmitted electronically - for example, as a Word document attached to an e-mail - the metadata is transmitted with the document.

Metadata con be "scrubbed" or removed from an electronic document by various means, including the use of special software programs or by scanning a printed copy of the document and sending it in a PDF format. Transmission of metadata can also be avoided by transmitting hard copies of the document rather than electronic copies or by faxing the document.

Metadata embedded in an electronic document can be "mined" or viewed by a recipient of the document. Some metadata can be accessed simply by right-clicking a mouse or selecting "properties" or "show markup" on a Word document. Other metadata can be accessed by the use of special software programs.

There are many types of metadata, many ways of creating metadata, and many means for removing and accessing metadata, all of which will undoubtedly continue to expand and evolve with technological innovation.

Most metadata is not confidential, and the disclosure of metadata may often be intentional and for the mutual benefit of clients with adverse interests. Other metadata may contain confidential information the disclosure of which can have serious adverse consequences to a client. For example, a lawyer may use a template for pleadings, discovery and affidavits which contain metadata within the document with names and other important information about a particular matter which should not be disclosed to another party in another action. Also as an example, a lawyer may circulate within the lawyer's firm a draft pleading or legal memorandum on which other lawyers may add comments about the strengths and weaknesses of a client's position which are embedded in the document by not apparent in the document's printed form. Similarly, documents used in negotiating a price to pay in a transaction or in the settlement of a lawsuit may contain metadata about how much or how little one side or the other may be willing to pay or to accept.

Due to the hidden, or not readily visible, nature of metadata and the ease with which electronic documents can be transmitted, a potential exists for the inadvertent disclosure of confidential or privileged information in the form of metadata in both a litigation and non-litigation setting, which in turn could give rise to violations of lawyer's ethical duties.

Applicable Rules

Minn. R. Prof. Cond. 1.1 states that "[a] lawyer shall provide competent representation to a client." Comment 5 to Rule 1.1 provides that "[c]ompetent handling of a particular matter includes . . . use of methods and procedures meeting the standards of competent practitioners."

As noted in American Bar Association Formal Opinion 06-442 (2006) at 1:

> *In modern legal practice, lawyers regularly receive e-mail, sometimes with attachments such as proposed contracts, from opposing counsel and other parties. Lawyers also routinely receive electronic documents that have been made available by opponents, such as archived e-mail and other documents relevant to potential transactions or to past events. Receipt may occur in the course of negotiations, due diligence review, litigation, investigation, and other circumstances.*

Competence requires that lawyers who use electronic documents understand that metadata is created in the generation of electronic documents, that transmission of electronic documents will include transmission of metadata, that recipients of the documents can access metadata, and that actions can be taken to prevent or minimize the transmission of metadata.

Minn. R. Prof. Cond. 1.6(a) states that, "[e]xcept when permitted under paragraph (b), a lawyer shall not knowingly reveal information relating to the representation of a client." Comment 2 to the rule explains that "[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." Comment 15 provides that "[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"; and Comment 16 further provides that "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."

Opinion No. 22 makes clear that the duty imposed by Minn. R. Prof. Cond. 1.6(a) regarding client information extends to and includes metadata in electronic documents. Thus, a lawyer must take reasonable steps to prevent the disclosure of confidential metadata. See ABA/BNA Lawyers' Manual on Professional Conduct 55:401 (2008) ("When a lawyer sends, receives, or stores client information in electronic form, the lawyer's duty to protect that information from disclosure to unauthorized individuals is the same as it is for information communicated or kept in any other form.").

Minn. R. Prof. Cond. 4.4(b) states that "[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 2 to the Rule explains that lawyers sometimes receive documents that were mistakenly sent and that "[i]f 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." Comment 2 states that "[f]or purposes of this rule, 'document' includes e-mail or other electronic modes of transmission subject to being read or put into readable form. Opinion No. 22 makes clear that the duty imposed by Minn. R. Prof. Cond. 4.4(b) regarding documents extends to metadata in electronic documents.

"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." Comment 2 to Minn. R. Prof. Cond. 4.4.

The generation, transmittal and receipt of documents containing metadata also implicates ethical obligations under Minn. R. Prof. Cond. 5.1 and 5.3.

Opinion 22 is not meant to suggest there is an ethical obligation on a receiving lawyer to look or not to look for metadata in an electronic document. Whether and when a lawyer may be advised to look or not to look for such metadata is a fact specific question beyond the scope of this Opinion.

A layer may be subject to a number of obligations other than those provided by the MRPC in connection with the transmission and receipt of metadata, including obligations under the Federal Rules of Civil Procedure and the Minnesota Rules of Civil Procedure. Removing metadata from evidentiary documents in the context of litigation or in certain other circumstances may be impermissible or illegal. Opinion No. 22 addresses only a lawyer's ethical obligations regarding metadata under the Minnesota Rules of Professional Conduct.

OPINION NO. 23

Advising Clients on Medical Marijuana

A lawyer may advise a client about the Minnesota Medical Marijuana Law and may represent, advise and assist clients in all activities relating to and in compliance with the Law, including the manufacture, sale, distribution and use of medical marijuana, without violating the Minnesota Rules of Professional Conduct, so long as the lawyer also advises his or her client that such activities may violate federal law, including the federal Controlled Substance Act, United States Code, title 21, section 841(a)(1).

Adopted: April 6, 2015.

Rules for Admission to the Bar

Effective August 18, 1998
With amendments effective through October 1, 2021

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TEXT OF RULES

Rule 1. Purpose

The Board of Law Examiners is established to ensure that those who are admitted to the bar have the necessary competence and character to justify the trust and confidence that clients, the public, the legal system, and the legal profession place in lawyers.

(Amended effective September 1, 2004; amended effective July 1, 2007.)

Rule 2. Definitions and Due Date Provisions

A. Definitions. As used in these Rules:

(1) "Affidavit" means: (a) a document that has been signed, sworn, and notarized; or (b) a document that has been signed under penalty of perjury, provided that the signature is affixed immediately below a declaration using substantially the following language: 'I declare under penalty of perjury that everything I have stated in this document is true and correct.'

(2) "Application file" means all information relative to an individual applicant to the bar collected by or submitted to the Board while the application is pending and during any conditional admission period.

(3) "Applicant portal" is a confidential password-protected electronic site used by applicants and Board staff to share information and to send and receive documents.

(4) "Approved law school" means a law school provisionally or fully approved by the American Bar Association.

(5) "Board" means the Minnesota State Board of Law Examiners.

(6) "Court" means the Minnesota Supreme Court.

(7) "Director" means the staff director for the Board.

(8) "Full-time faculty member" means a person whose professional responsibilities are consistent with the definition of "full-time faculty member" set forth in the *Standards for Approval of Law Schools*, published by the American Bar Association's Section of Legal Education and Admissions to the Bar.

(9) "Good character and fitness" means traits, including honesty, trustworthiness, diligence and reliability, that are relevant to and have a rational connection with the applicant's present fitness to practice law.

(10) "Jurisdiction" means the District of Columbia or any state or territory of the United States.

(11) "Legal services program" means a program existing primarily for the purpose of providing legal assistance to indigent persons in civil or criminal matters.

(12) "Notify" or "give notice" means to mail or deliver a document to the last known address of the applicant or the applicant's lawyer. Notice is complete upon mailing, but extends the applicant's period to respond by three days.

(13) "Uniform Bar Examination" or "UBE" is an examination prepared by the National Conference of Bar Examiners (NCBE), comprised of six Multistate Essay Examination questions, two Multistate Performance Test questions, and the Multistate Bar Examination.

B. Due Dates Provisions. Due dates specified under these Rules shall be strictly enforced and shall mean no later than 4:30 p.m. on the date stated, absent a written determination by the Board that extraordinary circumstances warrant an adjustment of a specific deadline for all applicants. If the due date falls on a Saturday, Sunday, or a legal holiday, the deadline shall be the first working day thereafter. Materials mailed with a postmark dated on the due date will be accepted.

(Amended effective March 14, 2000; amended effective September 1, 2004; amended effective July 1, 2007; amended effective September 1, 2011; amended effective February 1, 2013; amended effective July 1, 2016; amended effective November 20, 2018; amended effective April 6, 2020; amended effective October 1, 2021.)

Rule 3. State Board of Law Examiners

A. Composition. The Board shall consist of nine members, including a president. Seven of the members shall be lawyers having their principal office in this state and two shall be non-lawyer public members, each appointed by the Court for a term of three years or until a successor is appointed and qualifies. With the exception of the president, Board members may serve no more than three successive three-year terms. The president shall be appointed by the Court and shall serve as president, at the pleasure of the Court, for no more than six years. The terms of office may be staggered by the Court by any method it deems appropriate. The Board shall select a secretary from among its members.

B. Authority. The Board is authorized:

(1) Subject to the approval of the Court, to employ a director on a full-time or part-time basis, to prescribe duties, and to fix compensation;

(2) To secure examination questions and other testing instruments that the Board finds valid and reliable in measuring the competence of applicants to practice law, and to pay reasonable compensation for them;

(3) To employ examination graders;

(4) To establish a minimum passing score for the examinations;

(5) To conduct investigations of applicants' backgrounds as may be reasonably related to fitness to practice or eligibility under the Rules, and to require applicants to pay the costs of the investigations;

(6) To delegate to its President the authority to appoint former Board members to assist the Board by joining one or more current Board members in conducting character and fitness interviews of applicants;

(7) To recommend to the Court the admission and licensure of applicants to practice law in Minnesota;

(8) To administer these Rules and adopt policies and procedures consistent with these Rules;

(9) To delegate to its president and director authority to make necessary determinations to implement the Board's policies and procedures and these Rules;

(10) To administer the Student Practice Rules of the Minnesota Supreme Court;

(11) To prepare and disseminate information to prospective applicants and the public about procedures and standards for admission to practice law in this state.

C. Board Meetings and Quorum.

(1) Meetings. Board meetings are open to the public except when the Board is considering the following:

(a) Examination materials;

(b) Any information concerning an applicant, potential applicant, or conditionally admitted lawyer;

(c) Personnel matters;

(d) Any information that is confidential or private under Rule 14;

(e) Legal advice from its counsel.

(2) Minutes. Minutes of the public portions of Board meetings are available upon request from the Board office.

(3) Meeting Attendance. Board members may attend meetings in person or, in extraordinary circumstances, by conference call.

(4) Quorum. A quorum of the Board shall be a majority of its sitting members.

(Amended effective September 1, 2004; amended effective July 1, 2007; amended effective September 1, 2011; amended effective July 1, 2016.)

Rule 4. General Requirements for Admission

A. Eligibility for Admission. The applicant has the burden to prove eligibility for admission by providing satisfactory evidence of the following:

(1) Age of at least 18 years;

(2) Good character and fitness as defined by these Rules;

(3) One of the following:

(a) Graduation with a J.D. or LL.B. degree from a law school that is provisionally or fully approved by the American Bar Association;

(b)(i) A bachelor's degree from an institution that is accredited by an agency recognized by the United States Department of Education or foreign equivalent;

(ii) a J.D. degree or equivalent from a law school attended following completion of undergraduate studies;

(iii) the applicant has been licensed to practice law in any state or territory of the United States or the District of Columbia in 60 of the previous 84 months; and

(iv) that the applicant has been engaged, as principal occupation, in the practice of law for 60 of the previous 84 months in one or more of the activities listed in Rule 7A(1)(c); or

(c) the applicant has been licensed to practice law in any state or territory of the United States or the District of Columbia for at least 10 years.

(4) Passing score on the written examination under Rule 6 or qualification under Rules 7A, 7B, 7C, 8, 9, or 10. An applicant eligible under Rule 4A(3)(b) but not under Rule 4A(3)(a) or 4A(3)(c) must provide satisfactory evidence of a passing score on the written examination under Rule 6 and is not eligible for admission under Rule 7A, 7B, 7C, 8, 9, or 10;

(5) A scaled score of 85 or higher on the Multistate Professional Responsibility Examination (MPRE); and

(6) Not currently suspended or disbarred from the practice of law in another jurisdiction or any foreign jurisdiction.

B. Application for Admission. To be accepted as complete, an application must be submitted on a form prescribed by the Board together with the following:

(1) A fee in an amount prescribed by Rule 12;

(2) An authorization for release of information form signed and submitted by the applicant in a manner prescribed by the Board;

(3) For applicants seeking admission by examination, a passport-style photo;

(4) Two affidavits of good character from persons who have known the applicant for at least one year. To be acceptable, each affidavit shall:

(a) Be executed by a person who is unrelated to the applicant by blood or marriage and not living in the same household;

(b) Be executed by a person who was not a fellow law student during the applicant's enrollment;

(c) Describe the duration of time and circumstances under which the affiant has known the applicant;

(d) Describe what the affiant knows about the applicant's character and general reputation; and

(e) Provide other information bearing on the applicant's character and fitness to practice law.

C. Evidence of Graduation (Conferral of Degree). At least 30 days prior to the examination, each applicant shall cause to be filed a document from the applicant's law school, in a form prescribed by the Board and signed by the dean or other authorized person, stating:

(1) That the law school has conferred a J.D. or LL.B. degree upon the applicant; or

(2) That the applicant has completed all coursework 30 days prior to the examination for which the applicant has applied, fulfilled all requirements for conferral of degree, and will be awarded a J.D. or LL.B. degree within 120 days following the examination. An applicant filing evidence of conferral of degree pursuant to Rule 4D(2) shall cause to be filed a certified transcript verifying the award of the degree within 120 days following the examination.

D. Additional Filing When Admitted Elsewhere. An applicant who has been admitted to practice in another jurisdiction shall also file or cause to be filed at the time of the application:

(1) A copy of the application for admission to the bar from the bar admissions authority in each jurisdiction in which the applicant has applied for admission to the practice of law;

(2) A document from the proper authority in each other jurisdiction where admitted showing the date of admission to the bar;

(3) A document from the proper authority in each other jurisdiction where admitted stating that the applicant is in good standing; and

(4) A document from the proper authority in each other jurisdiction where admitted indicating whether the applicant is the subject of any pending complaint or charge of misconduct.

E. Applicant Without MPRE Score. An applicant may file an application without having taken the MPRE. However, the applicant shall not be admitted until he or she has submitted evidence of an MPRE scaled score of 85 or higher. Such applicants must be admitted within 12 months of the date of a written notice from the Board or the application will be considered to have been withdrawn.

F. Additional Information Required. At the request of the Board, an applicant will be required to obtain and submit additional information.

G. Continuing Obligation to Update Application. An applicant has a continuing obligation to provide written updates to the application. This obligation continues until such time as the applicant is admitted, the application is withdrawn, or there is a final determination by the Board or Supreme Court. Applicants conditionally admitted under Rule 16 must continue to update their application for the term of the consent agreement.

H. Required Cooperation.

(1) An applicant has the duty to cooperate with the Board and the director by timely complying with requests, including requests to:

(a) Provide complete information, documents, and signed authorizations for release of information;

(b) Obtain reports or other information necessary for the Board to properly evaluate the applicant's fitness to practice;

(c) Appear for interviews to determine eligibility for admission or facilitate the background investigation.

(2) An applicant shall not discourage a person from providing information to the Board or retaliate against a person for providing information to the Board.

(3) If the Board determines that an applicant has breached the duty to cooperate, the Board may deem the application withdrawn, may deny an opportunity to test, or may deny admission.

I. Repeat Examinee. An applicant who has been unsuccessful on a prior Minnesota Bar Examination may reapply by submitting:

(1) A new application for admission pursuant to Rule 4B;

(2) The proper fee under Rule 12;

(3) An authorization for release of information signed and submitted by the applicant in a manner prescribed by the Board;

(4) A passport-style photo; and

(5) If the original application is more than two years old, new affidavits as described in Rule 4B(4) of these Rules.

J. Incomplete Application. An application determined to be incomplete shall be returned to the applicant.

K. Withdrawal of Application. An applicant may withdraw the application by notifying the Board in writing at any time prior to the issuance of an adverse determination.

(Amended effective March 14, 2000; amended effective September 1, 2004; amended effective July 1, 2007; amended effective September 1, 2011; amended effective February 1, 2013; amended effective May 1, 2021; amended effective October 1, 2021.)

Rule 5. Standards for Admission

A. Essential Eligibility Requirements. Applicants must be able to demonstrate the following essential eligibility requirements for the practice of law:

(1) The ability to be honest and candid with clients, lawyers, courts, the Board, and others;

(2) The ability to reason, recall complex factual information, and integrate that information with complex legal theories;

(3) The ability to communicate with clients, lawyers, courts, and others with a high degree of organization and clarity;

(4) The ability to use good judgment on behalf of clients and in conducting one's professional business;

(5) The ability to conduct oneself with respect for and in accordance with the law;

(6) The ability to avoid acts which exhibit disregard for the rights or welfare of others;

(7) The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes, and any applicable order of a court or tribunal;

(8) The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers, courts, and others;

(9) The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and

(10) The ability to comply with deadlines and time constraints.

B. Character and Fitness Standards and Investigation.

(1) Purpose. The purpose of the character and fitness investigation before admission to the bar is to protect the public and to safeguard the justice system.

(2) Burden of Proof. The applicant bears the burden of proving good character and fitness to practice law.

(3) Relevant Conduct. The revelation or discovery of any of the following shall be treated as cause for further inquiry before the Board determines whether the applicant possesses the character and fitness to practice law:

(a) Unlawful conduct;

(b) Academic misconduct;

(c) Misconduct in employment;

(d) Acts involving dishonesty, fraud, deceit, or misrepresentation;

(e) Acts which demonstrate disregard for the rights or welfare of others;

(f) Abuse of legal process, including the filing of vexatious or frivolous lawsuits;

(g) Neglect of financial responsibilities;

(h) Neglect of professional obligations;

(i) Violation of an order of a court, including child support orders;

(j) Conduct that evidences current mental or emotional instability that may impair the ability to practice law;

(k) Conduct that evidences current drug or alcohol dependence or abuse that may impair the ability to practice law;

(l) Denial of admission to the bar in another jurisdiction on character and fitness grounds;

(m) Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;

(n) The making of false statements, including omissions, on bar applications in this state or any other jurisdiction.

(4) Considerations. The Board shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors shall be considered in assigning weight and significance to prior conduct:

(a) The applicant's age at the time of the conduct;

(b) The recency of the conduct;

(c) The reliability of the information concerning the conduct;

(d) The seriousness of the conduct;

(e) The factors underlying the conduct;

(f) The cumulative effect of the conduct or information;

(g) The evidence of rehabilitation as defined in Rule 5B(5);

(h) The applicant's candor in the admissions process; and

(i) The materiality of any omissions or misrepresentations.

(5) Rehabilitation. An applicant who affirmatively asserts rehabilitation from past conduct may provide evidence of rehabilitation by submitting one or more of the following:

(a) Evidence that the applicant has acknowledged the conduct was wrong and has accepted responsibility for the conduct;

(b) Evidence of strict compliance with the conditions of any disciplinary, judicial, administrative, or other order, where applicable;

(c) Evidence of lack of malice toward those whose duty compelled bringing disciplinary, judicial, administrative, or other proceedings against applicant;

(d) Evidence of cooperation with the Board's investigation;

(e) Evidence that the applicant intends to conform future conduct to standards of good character and fitness for legal practice;

(f) Evidence of restitution of funds or property, where applicable;

(g) Evidence of positive social contributions through employment, community service, or civic service;

(h) Evidence that the applicant is not currently engaged in misconduct;

(i) Evidence of a record of recent conduct that demonstrates that the applicant meets the essential eligibility requirements for the practice of law and justifies the trust of clients, adversaries, courts, and the public;

(j) Evidence that the applicant has changed in ways that will reduce the likelihood of recurrence of misconduct; or

(k) Other evidence that supports an assertion of rehabilitation.

(6) Continuing Obligation. The applicant has a continuing obligation to update the application with respect to all matters inquired of on the application. This obligation continues during the pendency of the application, including the period when the matter is on appeal to the Board or the Court and during any period of conditional admission.

(7) Determination. With the exception of applicants who have withdrawn, or have been deemed to have withdrawn, a character and fitness determination shall be made with respect to each applicant who is either a successful examinee or otherwise qualified by practice for admission under these Rules. An adverse determination on character and fitness grounds may be appealed under Rule 15.

(8) Advisory Opinions.

(a) A law student may request a written advisory opinion from the Board with respect to his or her character and fitness for admission by filing a completed application for admission, a fee in the amount required under Rule 12L, two affidavits as required by Rule 4B(4), and an authorization for release of information as required by Rule 4B(2).

(b) Advisory opinions will not be binding on the Board.

(Amended effective September 1, 2004; amended effective July 1, 2007; amended effective September 1, 2011; amended effective July 1, 2016; amended effective October 1, 2021.)

Rule 6. Admission by Examination

A. Dates of Examinations. Examinations shall be held the last Tuesday and Wednesday of the months of February and July each year, at a place to be determined by the Board.

B. Timely Filing Deadlines. An application for admission by examination shall be filed in the office of the Board by October 15 for the February examination, or by March 15 for the July examination. Due dates shall be strictly enforced as specified in Rule 2B.

C. Late Filing Deadlines. Late applications will be accepted on or before December 1 for the February examination, or on or before May 1 for the July examination but must be accompanied by the late filing fee pursuant to Rule 12. No applications shall be accepted after the late filing deadline. Due dates shall be strictly enforced as specified in Rule 2B.

D. Denial of Opportunity to Test. An applicant may be denied permission to take an examination:

(1) When the applicant has failed to comply with the requirements of Rule 4B, 4C, or 4H; or

(2) When the Board has determined the applicant has not satisfied the good character and fitness requirement of Rule 4A(2).

E. Scope of Examination. The Minnesota Bar Examination shall be the Uniform Bar Examination prepared by the National Conference of Bar Examiners, comprised of six Multistate Essay Examination (MEE) questions, two Multistate Performance Test (MPT) questions, and the Multistate Bar Examination (MBE).

(1) Essay Questions. The essay examination is comprised of six 30-minute MEE questions, covering any one or more of the following subjects:

Business Associations (Agency and Partnership; Corporations; and Limited Liability Companies)

Conflict of Laws

Constitutional Law

Contracts (including contracts under the Uniform Commercial Code (UCC))

Criminal Law and Procedure

Evidence

Family Law

Federal Civil Procedure

Real Property

Secured Transactions under the UCC

Torts

Trusts and Estates (Decedents' Estates; Trusts and Future Interests).

(2) Multistate Performance Test. The performance test shall include two 90-minute questions testing the applicant's ability to perform a lawyering task using legal and factual materials provided.

F. Testing Accommodations. An applicant whose disability requires testing accommodations shall submit with the application a written request pursuant to the Board's testing accommodations policy and shall describe:

(1) The type of accommodation requested;

(2) The reasons for the requested accommodation, including medical documentation in a format set forth in the policy referenced above.

The Board shall notify the applicant of its decision. A denial or modification of a request for testing accommodations constitutes an adverse determination of the Board and may be appealed pursuant to Rule 15.

G. Computer Use. Any applicant requesting to use a laptop computer to write the essay and performance test portion of the bar examination shall submit a computer registration form with the application and pay the required fee.

H. Examination Results. The results of the examination shall be released electronically to each examinee via the examinee's applicant portal. The date of the release of examination results shall be announced at the examination.

I. Failing Examination Scores. A failing score on the bar examination is a final decision of the Board and does not afford the applicant the appeal and hearing rights set forth in Rule 15.

J. Stale Examination Scores. A passing score on the Minnesota Bar Examination is valid for 36 months from the date of the examination. Applicants must be admitted within 36 months of the examination.

(Amended effective September 1, 2004; amended effective July 1, 2007; amended effective September 1, 2011; amended effective February 1, 2013; amended effective October 27, 2014; amended effective July 1, 2016.)

Rule 7. Admission Without Examination

A. Eligibility by Practice.

(1) Requirements. An applicant may be eligible for admission without examination if the applicant otherwise qualifies for admission under Rule 4 (excluding applicants who qualify only under Rule 4A(3)(b)) and provides documentary evidence showing that for at least 36 of the 60 months immediately preceding the application, the applicant:

(a) Held a license to practice law in active status;

(b) Was in good standing before the highest court of all jurisdictions where admitted; and

(c) Was engaged in the lawful practice of law for at least 1,000 hours per year as a:

i. Lawyer representing one or more clients, including on a pro bono basis;

ii. Lawyer in a law firm, professional corporation, or association;

iii. Judge in a court of law;

iv. Lawyer for any local or state governmental entity;

v. House counsel for a corporation, agency, association, or trust department;

vi. Lawyer with the federal government or a federal governmental agency including service as a member of the Judge Advocate General's Department of one of the military branches of the United States;

vii. Full-time faculty member in any approved law school; and/or

viii. Judicial law clerk whose primary responsibility is legal research and writing.

(2) Jurisdiction. The lawful practice of law described in Rule 7A(1)(c)(i) through (v) must have been performed in a jurisdiction in which the applicant is admitted, or performed in a jurisdiction that permits the practice of law by a lawyer not admitted in that jurisdiction. Practice described in Rule 7A(1)(c)(vi) through (viii) may have been performed outside the jurisdiction where the applicant is licensed.

B. Eligibility for Admission by MBE Score. An applicant may be eligible for admission without examination under Rule 4A(4) if the applicant has received a scaled score of 145 or higher on the MBE taken as a part of and at the same time as the essay or other part of a written bar examination given by another jurisdiction, was successful on that bar examination, and was subsequently admitted in that jurisdiction. The applicant shall submit evidence of the score and a completed application to the Board within 36 months of the date of the qualifying examination being used as the basis for the admission.

C. Eligibility for Admission by UBE Score. An applicant may be eligible for admission without examination under Rule 4A(4) if the applicant has received a scaled score of 260 or higher earned in another jurisdiction on the UBE and the score is certified as a UBE score by the National Conference of Bar Examiners.

(1) Application Deadline. The applicant shall submit evidence of the score and a complete application for admission to the Board within 36 months of the date of the qualifying examination being used as the basis for the admission.

(2) Concurrent Application. An applicant may submit the application prior to obtaining the qualifying UBE score by enclosing with the application evidence that the applicant is registered for the next administration of the UBE or is awaiting examination results in a UBE jurisdiction. An applicant who has applied under this rule must submit evidence of a qualifying UBE score within 12 months of the date the application is received or the applicant will be deemed ineligible and the file closed.

D. Transfer of MBE or UBE Score. An applicant seeking to transfer a MBE or UBE score achieved in another jurisdiction to Minnesota shall submit a written request for transfer to the National Conference of Bar Examiners.

E. MBE Score Advisory. Upon written request, the director will advise an applicant or potential applicant who took and passed a bar examination in another jurisdiction whether or not his or her MBE score satisfies the requirements of Rule 7B. Requests for score advisory shall include the following:

(1) Complete name and social security number of the examinee; and

(2) Month, year, and jurisdiction of test administration.

F. No Waiver of Time Requirements. The minimum time requirements and the timely filing requirements of this Rule shall be strictly enforced.

G. Eligibility After Unsuccessful Examination. An applicant may be eligible for admission without examination under this Rule notwithstanding a prior failure on the Minnesota Bar Examination.

(Amended effective March 14, 2000; amended effective September 1, 2004; amended effective July 1, 2007; amended effective September 1, 2011; amended effective February 1, 2013; amended effective November 20, 2018; amended effective April 1, 2020.)

Rule 8. Admission by Temporary License for Legal Services Programs

A. Eligibility. A lawyer licensed in another jurisdiction may apply for and be admitted under a temporary license to practice law in Minnesota when the applicant has accepted employment in Minnesota as a lawyer for a legal services program.

B. Filing. In order to qualify for the license, the lawyer must comply with the requirements of Rule 4A(1), (2), (3)(a), and (6) and must file with the Board, the following:

(1) A completed application for temporary license to practice law in Minnesota for a legal services program;

(2) A certificate or certificates from the proper authority in each jurisdiction certifying that the lawyer is in good standing and that no charges of professional misconduct are pending;

(3) An affidavit from the applicant's employer attesting to his or her knowledge of the applicant's competence and good character, and the fact that the applicant has accepted employment as a lawyer for a legal services program in Minnesota and will be supervised by a licensed Minnesota lawyer;

(4) Two additional affidavits of character as prescribed by Rule 4B(4), and a fee consistent with Rule 12G of these Rules.

C. Certification of Applicant's Good Character and Fitness. The office of the Board shall conduct an expedited character and fitness investigation and certify the applicant's good character and fitness prior to issuance of a license under this Rule.

D. Limitation. A license granted pursuant to this Rule shall authorize the lawyer to practice solely on behalf of the indigent clients of the designated legal services program.

E. Duration and Revocation. This temporary license shall be valid for a period of no more than 15 months from the date of issuance. Upon notice to the Clerk of the Appellate Courts, the Board shall have authority to revoke a temporary license issued pursuant to this Rule upon the occurrence of any of the following:

(1) The holder's admission to practice law in Minnesota pursuant to Rule 6 (Admission by Examination), Rule 7A (Eligibility by Practice) or 7B (Eligibility by Test Score);

(2) Termination of the holder's employment with the employer referred to in Rule 8B(3);

(3) The lapse of 15 months from the date of issuance;

(4) The holder's failure of the Minnesota Bar Examination; or

(5) Issuance by the Board of an adverse determination relative to the applicant's character and fitness.

F. Credit for Admission Without Examination. Time in the practice of law in the State of Minnesota under this temporary license may be counted toward the applicant's eligibility for admission without examination under Rule 7A.

(Amended effective September 1, 2004; amended effective July 1, 2007; amended effective September 1, 2011.)

Rule 9. Admission by Temporary House Counsel License

A. Practice by House Counsel. A lawyer licensed in another jurisdiction shall not practice law in Minnesota as house counsel unless he or she is admitted to practice in Minnesota under this Rule, Rule 6 (Admission by Examination), Rule 7 (Admission Without Examination), or Rule 10 (Admission by House Counsel License).

B. Eligibility. A lawyer licensed in another jurisdiction may apply for and be admitted under a temporary house counsel license when the lawyer:

(1) Is employed in Minnesota as house counsel solely for a single corporation (or its subsidiaries), association, business, or governmental entity whose lawful business consists of activities other than the practice of law or the provision of legal services; and

(2) Has practiced law, by engaging in one or more of the activities listed in Rule 7A for at least 36 of the previous 60 months; and

(3) Complies with the eligibility provisions of Rule 4A(1), (2), (3)(a), (4), and (6).

The practice of law during the qualifying period must have been performed in a jurisdiction where the applicant is licensed or performed in a jurisdiction that permits the practice of law by a lawyer not licensed in that jurisdiction, unless the applicant, during the qualifying period, was practicing as house counsel for a corporation, agency, association, or trust department.

C. Requirements. In order to qualify for the temporary house counsel license, the applicant shall comply with the requirements of these Rules and file the following with the Board:

(1) An application for license to practice law in Minnesota as described in Rule 4B;

(2) The documents listed in Rules 4C and 4D;

(3) An affidavit from an officer, director, or general counsel of applicant's employer or parent company employer stating the date of employment and attesting to the fact that applicant is employed as house counsel solely for said employer, that applicant is an individual of good character, and that the nature of the employment meets the requirements of Rule 9B(1);

(4) A fee consistent with Rule 12F; and

(5) Other information, if requested by the Board.

D. Limitation. A license issued pursuant to this Rule authorizes the holder to practice solely for the employer designated in the affidavit required by Rule 9C(3), except that the lawyer is authorized to provide "pro bono legal representation" to a "pro bono client" referred to the lawyer through an "approved legal services provider" as these phrases are defined in Rule 2S, Rule 2R, and Rule 2B, respectively, of the Rules of the Supreme Court for Continuing Legal Education of the Bar.

E. Issuance of Temporary House Counsel License. An expedited character and fitness investigation will be conducted, and if the Board finds that the applicant's present character and fitness qualifies the applicant for admission, a temporary license will be issued.

F. Duration and Expiration of Temporary License. The temporary license shall expire 12 months from the date of issuance, or sooner, upon the occurrence of any of the following:

(1) Termination of the holder's employment with the employer referenced in Rule 9C(3); or

(2) Admission to practice law in Minnesota pursuant to Rule 6 (Admission by Examination), Rule 7 (Admission Without Examination), or Rule 10 (Admission by House Counsel License); or

(3) Issuance of an adverse determination pursuant to Rule 15A.

After expiration of a temporary house counsel license, the former license holder, unless already admitted to practice law in Minnesota under another of these Rules, shall not practice law in Minnesota or otherwise represent that he or she is admitted to practice law in Minnesota.

G. House Counsel License Without Time Limitation. An applicant for or holder of a temporary house counsel license who anticipates practicing in Minnesota for more than 12 months should also apply for a house counsel license under Rule 10 or another license under these Rules.

H. Notice of Termination of Employment. A holder of a temporary house counsel license shall notify both the Board and the Lawyer Registration Office in writing within 10 business days of termination of employment with the employer referenced in Rule 9C(3).

I. Credit for Admission Without Examination. Time in the practice of law under the temporary house counsel license may be counted toward eligibility for admission without examination under Rule 7A.

J. Professional Conduct and Responsibility. A lawyer licensed under this Rule shall abide by and be subject to all laws and rules governing lawyers admitted to the practice of law in this state.

(Amended effective September 1, 2004; amended effective July 1, 2007; amended effective July 23, 2007; amended effective September 1, 2011; amended effective February 1, 2013.)

Rule 10. Admission by House Counsel License

A. Practice by House Counsel. A lawyer licensed in another jurisdiction shall not practice law in Minnesota as house counsel unless he or she is admitted to practice in Minnesota under this Rule, Rule 6 (Admission by Examination), Rule 7 (Admission Without Examination), or Rule 9 (Admission by Temporary House Counsel License).

B. Eligibility. A lawyer licensed in another jurisdiction or the holder of a temporary house counsel license issued pursuant to Rule 9B and 9C, who intends to practice in Minnesota for more than 12 months, may apply for a house counsel license when the lawyer:

(1) Is employed in Minnesota as house counsel solely for a single corporation (or its subsidiaries), association, business, or governmental entity whose lawful business consists of activities other than the practice of law or the provision of legal services;

(2) Has practiced law by engaging in one or more of the activities listed in Rule 7A for at least 36 of the previous 60 months; and

(3) Complies with the eligibility provisions of Rule 4A(1), (2), (3)(a) or (c), (4), (5), and (6).

C. Requirements. In order to qualify for the house counsel license, the applicant shall comply with the requirements of these Rules and file the following with the Board:

(1) An application for a license to practice law in Minnesota as described in Rule 4B;

(2) The documents listed in Rules 4C and 4D;

(3) An affidavit from an officer, director, or general counsel of applicant's employer or parent company stating the date of employment and attesting to the fact that applicant is employed as house counsel solely for that employer, that applicant is an individual of good character, and that the nature of the employment meets the requirements of Rule 10B(1);

(4) A fee consistent with Rule 12F; and

(5) Other information, as requested by the Board.

D. Limitation. A license issued pursuant to this Rule authorizes the holder to practice solely for the employer designated in the Rule 10C(3) affidavit, except that the lawyer is authorized to provide "pro bono legal representation" to a "pro bono client" referred to the lawyer through an "approved legal services provider" as these phrases are defined in Rule 2S, Rule 2R, and Rule 2B, respectively, of the Rules of the Supreme Court for Continuing Legal Education of the Bar.

E. Expiration of House Counsel License. The house counsel license shall expire upon termination of the holder's employment with the employer referenced in Rule 10C(3). After a house

counsel license expires, the former license holder, unless already admitted to practice law in Minnesota under another of these Rules, shall not practice law in Minnesota or otherwise represent that he or she is admitted to practice law in Minnesota.

F. Notice of Termination of Employment. A house counsel license holder shall notify both the Board and the Lawyer Registration Office in writing within 10 business days of termination of employment with the employer referenced in Rule 10C(3).

G. Re-Issuance of House Counsel License. At the director's discretion, a house counsel license that has expired due to termination of holder's employment may be re-issued if re-issuance is requested within 90 days of the expiration of the license, provided that the other requirements of this Rule are met at the time of the request for re-issuance. The fee for re-issuance shall be consistent with Rule 12M.

H. Credit for Admission Without Examination. Time in the practice of law under the house counsel license may be counted toward eligibility for admission without examination under Rule 7A.

I. Professional Conduct and Responsibility. A lawyer licensed under this Rule shall abide by and be subject to all laws and rules governing lawyers admitted to the practice of law in this state.

(Added effective September 1, 2004; amended effective July 1, 2007; amended effective July 23, 2007; amended effective September 1, 2011; amended effective February 1, 2013; amended effective July 1, 2017; amended effective May 1, 2021.)

Rule 11. License for Foreign Legal Consultants

A. Eligibility. A person who is admitted to practice in a foreign country as a lawyer or counselor at law may apply for, and, at the discretion of the Board, may obtain a license to render services as a foreign legal consultant in this state, without examination, subject to the limitations set forth in this Rule.

B. Requirements. In order to qualify for the license the applicant must:

(1) Have been admitted to practice in a foreign country as a lawyer or counselor at law or the equivalent;

(2) As principal occupation, have been engaged in the practice of law of that country for at least five of the seven years immediately preceding the application;

(3) Be in current good standing as a lawyer or counselor at law or the equivalent in that country, and have remained in good standing throughout the period of his or her practice;

(4) Possess the good character and fitness required for admission to practice in this state;

(5) Have been awarded a post-secondary degree in law;

(6) Intend to practice as a foreign legal consultant in this state; and

(7) Maintain an office in this state for the purpose of practicing as a foreign legal consultant.

C. Applications. In order to qualify for the foreign legal consultant license, an applicant must file with the Board the following documents, together with duly authenticated English translations, if the documents are not in English:

(1) An Application for Foreign Legal Consultant License submitted on a form prescribed by the Board;

(2) An authentic certificate from the authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted to practice, which shall be accompanied by the official seal, if any, of such authority, and which shall certify:

(a) The authority's jurisdiction in such matters;

(b) The applicant's admission to practice in the foreign country, the date of admission, and the applicant's good standing as a lawyer or counselor at law or the equivalent in that jurisdiction;

(3) An authentic document from the authority having final jurisdiction over professional discipline in any foreign country or jurisdiction in which the applicant has been licensed as a lawyer or as a foreign legal consultant indicating whether any charge or complaint has ever been filed against the applicant with the authority, and, if so, the substance of each charge or complaint, and the adjudication or resolution of each charge or complaint;

(4) A letter of recommendation signed by, and accompanied with the official seal, if any, of one of the members of the executive body of the authority having final jurisdiction over professional discipline or from one of the judges of the highest court of law of the foreign country, certifying to the applicant's professional qualifications;

(5) Letters of recommendation from at least three lawyers or counselors at law or the equivalent admitted in and practicing in the foreign country where the applicant is admitted, setting forth the length of time, and under what circumstances they have known the applicant and stating their appraisal of the applicant's good character and fitness for admission;

(6) Affidavits from at least two members in good standing of the Minnesota Bar, setting forth the length of time, and under what circumstances they have known the applicant and their appraisal of the applicant's good character and fitness for admission;

(7) Any other evidence as to the applicant's educational and professional qualifications, good character and fitness and compliance with the requirements of this rule as the Board may require;

(8) A statement that the foreign legal consultant has read, understood, and made a commitment to observe the Minnesota Rules of Professional Conduct;

(9) A score report showing that the applicant received a scaled score of 85 or higher on the Multistate Professional Responsibility Examination, or an affidavit attesting to the applicant's attendance, within the previous 12 months, of no fewer than six hours of coursework in legal ethics accredited by the Minnesota Board of Continuing Legal Education;

(10) Evidence of professional liability insurance in an amount deemed sufficient by the director;

(11) An affidavit setting forth the foreign legal consultant's address within the State of Minnesota and designating the Clerk of Appellate Courts as agent for the service of process for all purposes;

(12) An affidavit stating that the foreign legal consultant shall notify the Board of any resignation or revocation of such foreign legal consultant's admission to practice in the foreign country of admission, or in any other state or jurisdiction in which the foreign legal consultant has

been licensed as a lawyer or counselor at law or equivalent or as a foreign legal consultant, or of any censure, suspension, or expulsion in respect of such admission;

(13) If employed as house counsel, an affidavit from an officer, director, or general counsel of applicant's employer attesting to the fact that applicant is employed as house counsel solely for that employer and agreeing to notify the Board if the applicant's employment is terminated; and

(14) A fee in the amount of $1,200.

D. Investigation. The Board shall conduct an investigation into the applicant's background and verify the applicant's supporting documents as the Board deems appropriate or necessary in the circumstances.

E. Scope of Practice. A person licensed as a foreign legal consultant under this Rule may render legal services in this state respecting the laws of the country in which the foreign legal consultant is admitted to practice as a lawyer, counselor at law or equivalent.

(1) The foreign legal consultant shall not conduct any activity or render any services constituting the practice of the law of the United States, of this state, or of any other state, commonwealth or territory of the United States or the District of Columbia including, but not limited to, the restrictions that the foreign legal consultant shall not:

(a) Appear for another person as a lawyer in any court or before any magistrate or other judicial officer or before any federal, state, county or municipal governmental agency, quasi-judicial or quasi-governmental authority in this state, or prepare pleadings or any other papers in any action or proceedings brought in any such court or before any judicial officer, except as authorized in any rule or procedure relating to admission pro hac vice, or pursuant to administrative rule;

(b) Provide legal advice in connection with the preparation of any deed, mortgage, assignment, discharge, lease, agreement of sale, or any other instrument affecting title to real property located in the United States;

(c) Prepare any will or trust instrument affecting the disposition of any property located in the United States and owned by a resident thereof or any instrument relating to the administration of a decedent's estate in the United States;

(d) Prepare any instrument in respect of the marital relations, rights or duties of a resident of the United States, or the custody or care of the children of a resident;

(e) Render professional legal advice on the law of this state or the United States or any other state, subdivision, commonwealth, or territory of the United States or the District of Columbia (whether rendered incident to the preparation of a legal instrument or otherwise);

(f) In any way represent that the foreign legal consultant is admitted to the Minnesota Bar or is licensed as a lawyer or foreign legal consultant in another state, territory, or the District of Columbia, or as a lawyer or counselor at law or the equivalent in a foreign country, unless so licensed;

(g) Use any title other than "Foreign Legal Consultant, Admitted to the Practice of Law in [name of country]." The foreign legal consultant's authorized title and firm name in the foreign country in which the foreign legal consultant is admitted to practice as a lawyer or counselor at law or the equivalent may be used if the title, firm name, and the name of the foreign country are stated together with the above-mentioned designation;

(h) Render any legal services for a client without utilizing a written retainer agreement which shall specify in bold type that the foreign legal consultant is not admitted to practice law in this state, nor licensed to advise on the laws of the United States or the District of Columbia, and that the practice of the foreign legal consultant is limited to the laws of the foreign country where such person is admitted to practice as a lawyer or counselor at law or the equivalent; or

(i) Hold any client funds or valuables without entering into a written retainer agreement which shall specify in bold type the name of a Minnesota lawyer licensed in good standing who is also representing the particular client in the particular matter at hand.

(2) A foreign legal consultant who is employed in Minnesota as house counsel solely for a single corporation (or its subsidiaries), association, business, or governmental entity is not subject to the restrictions as to scope of practice set forth in Rule 11E(1)(e), (f), (g), (h), and (i) provided that the practice is performed exclusively for the employer referenced above. A foreign legal consultant employed as house counsel may use the title "counsel."

F. Disciplinary Provisions.

(1) A foreign legal consultant is expressly subject to:

(a) the Minnesota Rules of Professional Conduct and all laws and rules governing lawyers admitted to the practice of law in this state;

(b) continuing review by the Board of qualifications to retain the license granted hereunder; and

(c) the disciplinary jurisdiction of the Minnesota Office of Lawyers Professional Responsibility and the Minnesota Supreme Court.

(2) Rule 11F(1) above shall not be construed to limit in any way concurrent disciplinary procedures to which the foreign legal consultant may be subject in the country of admission.

G. Rights and Obligations. A foreign legal consultant shall be entitled to the rights and obligations of a member of the Minnesota Bar with respect to:

(1) Affiliation in the same law firm with one or more members of the Minnesota Bar, including by employing one or more members of the bar; being employed by one or more members of the bar or by any partnership or professional corporation that includes members of the Minnesota Bar or that maintains an office in Minnesota; and being a partner in any partnership or shareholder in any professional corporation that includes members of the Minnesota Bar or that maintains an office in Minnesota; and

(2) Attorney-client privilege, work product protection, and similar professional privileges.

H. Re-Certification and Renewal Fees.

(1) Every three years a foreign legal consultant shall submit to the Board:

(a) An affidavit attesting to the foreign legal consultant's continued good standing as a lawyer or counselor at law or equivalent in the foreign country in which the foreign legal consultant is admitted to practice;

(b) An Application for Foreign Legal Consultant License submitted on a form prescribed by the Board; and

(c) A fee in the amount of $300.

(2) On an annual basis, a foreign legal consultant shall submit to the Minnesota Lawyer Registration Office a lawyer registration fee equivalent to the renewal fees paid by Minnesota licensed lawyers pursuant to the Rules of the Supreme Court for Registration of Lawyers.

I. Admission to Bar. If the Board determines that a foreign legal consultant under this Rule is subsequently admitted as a member of the Minnesota Bar, the foreign legal consultant's license shall be deemed superceded by the license to practice law in Minnesota.

J. Revocation and Expiration. If the Board determines that a foreign legal consultant no longer meets the requirements for licensure set forth in this Rule, the license shall expire. If the foreign legal consultant is employed as house counsel, the foreign legal consultant license shall expire on the date of the termination of the foreign legal consultant's employment by the employer referenced in Rule 11C(13).

(Renumbered and amended effective September 1, 2004; amended effective July 1, 2007; amended effective July 23, 2007; amended effective October 1, 2021.)

Rule 12. Fees

A. General. Applicants shall pay application fees or other fees required under these Rules by personal check or money order made payable to the Board. At the Board's discretion, fees may be accepted by credit card or electronic funds transfer. The applicable fee is determined as of the date of filing of a complete application under Rule 4.

B. Fee for Examination, Not Previously Admitted. An applicant who meets the following criteria shall submit a fee of $600:

(1) Applying to take the Minnesota examination for the first time; and

(2) Not admitted to practice in another jurisdiction; and

(3) Filing on or before the timely filing deadline (October 15 for the February examination, or March 15 for the July examination).

An applicant meeting the criteria in (1) and (2) above, who files after the timely filing deadline but before the late filing deadline (December 1 for the February examination, or May 1 for the July examination) shall submit a fee of $800. Applications will not be accepted after the late filing deadline.

C. Fee for Examination, Prior Admission. An applicant who meets the following criteria shall submit a fee of $1050:

(1) Licensed to practice in another jurisdiction more than six months prior to the date of the applicant's Minnesota application; and

(2) Filing on or before the timely filing deadline (October 15 for the February examination, or March 15 for the July examination).

An applicant meeting the criteria in (1) above, who files after the timely filing deadline but before the late filing deadline (December 1 for the February examination, or May 1 for the July examination) shall submit a fee of $1250. Applications will not be accepted after the late filing deadline.

D. Fee for Examination for Recently Admitted Applicants. An applicant applying to take the Minnesota examination who has been licensed to practice in another jurisdiction fewer than six

months prior to the date of the applicant's Minnesota application shall submit the fee for examination required by paragraph B of this Rule.

E. Repeat Examinations. An applicant who was unsuccessful on the Minnesota examination and is filing on or before December 1 for the February examination, or on or before May 1 for the July examination, shall submit a fee of $600 and comply with Rule 4I.

F. Fee for Admission Without Examination. An applicant for admission without examination pursuant to Rule 7 (Admission Without Examination) or Rule 10 (Admission by House Counsel License) shall submit a fee of $1150. An applicant for admission pursuant to Rule 9 (Admission by Temporary House Counsel License) shall submit a fee of $700.

G. Fee for Temporary License for Legal Services Program Practice. A fee in the amount of $75 must accompany an application for Temporary License pursuant to Rule 8. Payment of an additional fee, as required by Rule 12B, will qualify applicants under Rule 6. Payment of an additional fee, as required by Rule 12C, will qualify applicants under Rule 7A or 7B.

H. Transfer of Rule 8 Application to Rule 6 or Rule 7 Application. Documents submitted in support of a Rule 8 (Temporary License for Legal Services Programs) application for license may, upon the written request of applicant, constitute application pursuant to Rule 6 (Admission by Examination) or Rule 7 (Admission Without Examination) of these Rules, provided additional fees required by Rule 12 are submitted.

I. Refunds of Fees.

(1) Bar Examination Applications. An applicant who submits a written request to withdraw a bar examination application 15 or more days before the examination for which the applicant applied shall receive a refund in the amount of:

(a) $150, if the fee paid was in an amount specified by either Rule 12B or Rule 12E; or

(b) $300, if the fee paid was in an amount specified by Rule 12C.

(2) An applicant who is declared ineligible under Rule 7A, 9, or 10 and who submits a written request for refund within 30 days of notice of ineligibility shall receive a refund in the amount of $300.

(3) No other requests for refund will be granted.

J. Carry-over of Fees.

(1) Applicants Ineligible Under Rules 7A, 9, and 10. The fee of an applicant declared ineligible under Rule 7A, 9, or 10 shall, upon the applicant's written request, be applied to:

(a) An examination held within the succeeding 15 months; or

(b) An application made under Rule 8 or 9. The written request must be received by the Board within 30 days of notice of the denial. No other carry-over of fees, other than those provided for in the following paragraph, shall be granted.

(2) Emergencies. An applicant who notifies the Board prior to the examination that the applicant is unable to take the examination due to a medical emergency, death in the family, or similar exceptional circumstances, may request carry-over of the application fee to the next examination. The carry-over request must be made in writing, received in the Board office no later than 14 days following the examination, and be accompanied by written documentation of the emergency. The applicant shall submit a fee of $50 when reapplying for the next examination.

K. Copies of Examination Answers. An unsuccessful applicant may request copies of the applicant's essay answers. The request shall be in writing, submitted within 60 days of the release of the examination results, and accompanied by a fee of $20.

L. Fees for Advisory Opinions. An application filed for the purpose of receiving an advisory opinion from the Board must be accompanied by a fee in the amount of $100.

M. Fee for Re-issuance of House Counsel License. An applicant for re-issuance of a house counsel license under Rule 10G shall submit a fee of $275.

N. Other Fees. The Board may require an applicant to bear the expense of obtaining reports or other information necessary for the Board's investigation. The Board may require applicants to pay a reasonable application processing fee. The Board may charge reasonable fees for collection and publication of any information permitted to be released. For matters not covered in these Rules, the director may set reasonable fees which reflect the administrative costs associated with the service.

(Amended effective January 1, 2003; renumbered and amended effective September 1, 2004; amended effective July 1, 2007; amended effective January 1, 2008; amended effective September 1, 2011; amended effective September 1, 2019; amended effective April 1, 2020.)

Rule 13. Immunity

A. Immunity of the Board. The Board and its members, employees, agents, and monitors of conditionally admitted lawyers are immune from civil liability for conduct and communications relating to their duties under these Rules or the Board's policies and procedures.

B. Immunity of Persons or Entities Providing Information to the Board. Any person or entity providing to the Board or its members, employees, agents, or monitors, any information, statements of opinion, or documents regarding an applicant, potential applicant, or conditionally admitted lawyer, is immune from civil liability for such communications.

(Renumbered and amended effective September 1, 2004; amended effective July 1, 2007.)

Rule 14. Confidentiality and Release of Information

A. Application File. An applicant may review the contents of his or her application file with the exception of the work product of the Board and its staff. Such review must take place within two years after the filing of the last application for admission in Minnesota, at such times and under such conditions as the Board may provide.

B. Work Product. The Board's work product shall not be produced or otherwise discoverable, nor shall any member or former member of the Board or its staff be subject to deposition or compelled testimony except upon a showing of extraordinary circumstance and compelling need and upon order of the Court. In any event, the mental impressions, conclusions, and opinions of any member or former member of the Board or its staff shall be protected and not subject to compelled disclosure.

C. Examination Data.

(1) Statistics. Statistical information relating to examinations and admissions may be released at the discretion of the Board.

(2) MBE Score Advisory. The director may release individual MBE scores as provided in Rule 7E.

(3) Transfer of MBE Score. The score of an examinee may be disclosed to the bar admission authority of another jurisdiction, upon the examinee's written request to the National Conference of Bar Examiners (NCBE).

(4) Transfer of UBE Score. The score of an examinee may be disclosed to the examinee or to the bar admission authority of another jurisdiction upon the examinee's written request to the National Conference of Bar Examiners (NCBE).

(5) Release of Examination Scores and Essays to Unsuccessful Examinees. The director may release to an unsuccessful examinee the scores assigned to each of the various portions of the examination; and, upon payment of the fee specified by Rule 12K, the director may release copies of an unsuccessful examinee's answers to the MEE and MPT questions.

(6) Release of Examination Scores to Law Schools. At the discretion of the Board, the examination scores of an examinee may be released to the law school from which the examinee graduated.

D. Release of Information to Other Agencies. Information may be released to the following:

(1) Any authorized lawyer disciplinary agency;

(2) Any bar admissions authority; or

(3) Persons or other entities in furtherance of the character and fitness investigation.

E. Referrals. Information relating to the misconduct of an applicant may be referred to the appropriate authority.

F. Confidentiality. Subject to the exceptions in this Rule, all other information contained in the files of the office of the Board is confidential and shall not be released to anyone other than the Court except upon order of the Court.

(Renumbered and amended effective September 1, 2004; amended effective July 1, 2007; amended effective February 1, 2013; amended effective July 1, 2016.)

Rule 15. Adverse Determinations and Hearings

A. Adverse Determination. When an adverse determination relating to an applicant's character, fitness, or eligibility is made by the Board, the director shall notify the applicant of the determination, the reasons for the determination, the right to request a hearing, the right to be represented by counsel, and the right to present witnesses and evidence.

B. Request for Hearing. Within 20 days of notice of an adverse determination, the applicant may make a written request for a hearing. If the applicant does not timely request a hearing, the adverse determination becomes the final decision of the Board.

C. Scheduling of Hearing. The Board shall schedule a hearing upon receipt of the applicant's request for a hearing. At least 45 days prior to the hearing, the Board shall notify the applicant of the time and place.

D. Proceedings. At the discretion of the Board president, the hearing may be held before the full Board, before a sub-committee of the Board appointed by the president, or before a hearing examiner appointed by the president. The Board may employ special counsel. The hearing shall be recorded and a transcript shall be provided to the applicant on request at a reasonable cost. The applicant has the burden of proving by clear and convincing evidence that the applicant possesses good character and fitness to practice law and is eligible for admission.

E. Pre-Hearing Conference. The Board president or designee shall conduct a pre-hearing conference at least 30 days prior to the hearing for the purpose of addressing procedural issues. Unless the president or designee orders otherwise, Board counsel and the applicant shall exchange exhibit lists; the names and addresses of witnesses; proposed findings of fact, conclusions of law, and final decisions; or stipulations at least 15 days before the hearing.

F. Subpoenas. Upon written authorization of the Board president or designee, the applicant and Board counsel may subpoena evidence and witnesses for the hearing. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas.

G. Continuances. A written request for a continuance of a scheduled hearing shall be considered and decided by the Board president or designee, who shall grant such request only upon a showing of good cause.

H. Final Decision. Following the hearing, the Board shall notify the applicant in writing of its findings of fact, conclusions of law and final decision.

(Renumbered and amended effective September 1, 2004; amended effective July 1, 2007; amended effective September 1, 2011.)

Rule 16. Conditional Admission

A. Conditional Admission. The Board, upon its own initiative or the initiative of the applicant, may recommend to the Court that the applicant be admitted on a conditional basis.

B. Circumstances Warranting Conditional Admission. The Board may consider for conditional admission an applicant whose past conduct raises concerns under Rule 5, but whose current record of conduct evidences a commitment to rehabilitation and an ability to meet the essential eligibility requirements of the practice of law. The Board shall prescribe the terms and conditions of conditional admission in a consent agreement entered into by the Board and the applicant.

C. Consent Agreement. The consent agreement shall set forth the terms and conditions of conditional admission, shall be signed by the president or designee and by the applicant, and shall be made a part of the conditionally admitted lawyer's application file. The consent agreement shall remain confidential subject to the provisions of these Rules and of the Rules on Lawyers Professional Responsibility.

D. Transmittal to the Office of Lawyers Professional Responsibility. A list of conditionally admitted lawyers shall be transmitted each month to the Office of Lawyers Professional Responsibility (OLPR). In the event a complaint of unprofessional conduct or violation of the consent agreement is filed against the conditionally admitted lawyer, the application file shall be transmitted to the OLPR upon the request of that office.

E. Length of Conditional Period. The initial conditional admission period shall not exceed 60 months, unless a complaint for a violation of the consent agreement or a complaint of unprofessional conduct has been filed with the OLPR. The filing of any complaint with the OLPR shall extend the conditional admission until disposition of the complaint by the OLPR.

F. Consequences of Failure to Fulfill the Conditional Terms. Failure to fulfill the terms of the consent agreement may result in the suspension or revocation of the conditional admission license, or such other action as is appropriate under the Rules on Lawyers Professional Responsibility.

G. Monitoring of Consent Agreement by Conditional Admission Committee. During the conditional admission period, the conditionally admitted lawyer's compliance with the terms of the

consent agreement shall be monitored by a Conditional Admission Committee (CAC), a committee of no fewer than three Board members appointed by the president. The CAC shall conduct such investigation and take such action as is necessary to monitor compliance with the terms of the consent agreement, including, but not limited to, requiring the conditionally admitted lawyer to:

(1) submit written verification of compliance with conditions;

(2) appear before the CAC; and

(3) respond to any requests for evidence concerning compliance.

H. Procedure After Finding of Violation of Consent Agreement. If the CAC finds that a term or terms of the consent agreement have been violated, the CAC may request that the President convene the Board for the purpose of determining whether to file a complaint with OLPR or take other action to address the violation. The Board shall notify the conditionally admitted lawyer of the Board's decision if a complaint is filed.

I. Complaint for Violation of Consent Agreement; Disposition of Complaint. Any complaint for violation of the consent agreement filed with the OLPR shall set forth the basis for finding that a term or terms of the consent agreement have been violated.

J. Appeal. Appeal rights are limited to those set forth in Rule 15 and Rule 17.

(Added effective September 1, 2004; amended effective July 1, 2007; amended effective September 1, 2011; amended effective July 1, 2017.)

Rule 17. Appeal to the Supreme Court

A. Petition for Review. Any applicant who is adversely affected by a final decision of the Board may appeal to the Court by filing a petition for review with the Clerk of Appellate Courts within 20 days of receipt by the applicant of a final decision of the Board together with proof of service of the petition on the director of the Board. The petition shall briefly state the facts that form the basis for the complaint, and the applicant's reasons for believing the Court should review the decision.

B. Board Response. Within 20 days of service of the petition, the Board shall serve and file a response to the petition and a copy of the final decision of the Board. Thereupon the Court shall give such directions, hold such hearings, and make such order as it may in its discretion deem appropriate.

(Renumbered effective September 1, 2004; amended effective July 1, 2007.)

Rule 18. Reapplication

Unless the Board designates a shorter time period in its final decision, an applicant who has not satisfied the character and fitness requirement is prohibited from applying for admission to practice in Minnesota for three years from the date of the Board's final decision. An applicant whose conditional admission license has been revoked is prohibited from applying for admission for three years from the date of the revocation.

(Renumbered and amended effective September 1, 2004; amended effective July 1, 2007.)

Rule 19. Bar Admissions Advisory Council

A. Creation. There shall be an Advisory Council consisting of representatives of the Minnesota State Bar Association and of each of the Minnesota law schools to consult with the Board on matters

of general policy concerning admissions to the bar, amendments to the Rules, and other matters related to the work of the Board.

B. Meetings. The secretary of the Board shall call a joint meeting of the Advisory Council and the Board at least once each year. The Advisory Council shall meet at such other time as it may determine or when called by the Court or the Board.

C. Expenses. The members of the Advisory Council shall receive no compensation or reimbursement of expenses and shall serve for terms of three years.

(Renumbered and amended effective September 1, 2004; amended effective July 1, 2007.)

Character and Fitness Standards

[Repealed effective August 26, 1998]

Supervised Practice Rules

Adopted July 1, 2020
With amendments effective through March 1, 2021
The Supervised Practice Rules supersede the Student Practice Rules as of July 1, 2020

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TEXT OF RULES

Rule 1. Purpose.

The Minnesota Board of Law Examiners (Board) administers these Rules to ensure that law students and recent graduates certified under these Rules have sufficient legal education and adequate supervision to perform lawyering tasks in an effective and confidential manner, while protecting the interests of the client.

Rule 2. Definitions.

In these Rules,

A. "Eligible law student" means a student who:

1. is duly enrolled at the time of certification in a law school approved by the American Bar Association (ABA);

2. has completed legal studies equivalent to at least two semesters of full-time study prior to certification;

3. has been certified by the dean or designee of the law school as:

a. being of good academic standing; and

b. qualified to participate either in a paid or unpaid capacity in a practice placement or clinical program in order to provide legal services to clients as a law student practitioner.

B. "Eligible recent graduate" means a person who meets the following criteria:

1. has graduated from an ABA approved law school within the previous 18 months;

2. has been certified by the dean or designee of the law school as qualified to participate, either in a paid or unpaid capacity, in supervised legal employment or placement to provide legal services to clients as a supervised practitioner.

C. "Jurisdiction" means the District of Columbia or any state or territory of the United States.

D. "Law student practitioner" means an individual certified under these Rules who is a current law student.

E. "Student observer" means a student certified under these Rules to observe any and all professional activities of a member of the bar as part of an academic program or course for academic credit, including client communication. Communication between the client and the student shall be privileged under the same rules that govern attorney-client privilege and work product doctrine, and the presence of a student during communication between the lawyer and the client shall not, standing alone, waive these evidentiary privileges.

F. "Supervising lawyer" means a member of the Minnesota bar in good standing who accepts responsibility for a law student practitioner or supervised practitioner.

G. "Supervised practitioner" means an individual certified under these Rules who has graduated from an ABA approved law school within the previous 18 months.

Rule 3. Scope of Representation.

A law student practitioner or supervised practitioner may perform, under the supervision of a supervising lawyer, all functions that a lawyer may perform in representing and appearing on behalf of a client.

Rule 4. Obligations of Law School.

A. Certification: A law school seeking to certify or recertify eligible law students or recent graduates under these Rules shall file with the Board a statement signed by the dean or dean's designee stating the following:

1. The name of each eligible law student or recent graduate;

2. Verification that the individual is either in good academic standing or has graduated from the law school;

3. For eligible recent graduates, the date on which the graduate's degree was conferred;

4. For eligible law students, confirmation that the student has completed the equivalent of at least two semesters of full-time study;

5. The name of the supervising lawyer who has agreed to supervise the individual's work; in the case of an entity, the name of the contact at the legal employer that will verify that all work is properly supervised;

6. For student observers, confirmation that the placement is part of an academic program or course for academic credit;

7. A statement that the law school will notify the Board in writing upon notice that any of the following have occurred;

a. The law student practitioner or student observer is placed on academic probation;

b. The law student practitioner graduates from law school;

c. The supervising lawyer advises the school that the employment or placement of the law student or supervised practitioner has ended.

d. The law school becomes aware that the supervised practitioner:

1. Has failed the bar examination any jurisdiction; or

2. Has been admitted to the bar of any jurisdiction.

B. Continuing Obligation: A law school shall provide written notice to the Board within 30 days of becoming aware of any event noted in Rule 4A(7).

1. If a law student practitioner graduates, the law school shall advise the Board if the certification should convert from law student practitioner to supervised practitioner and, if so, provide the date of conferral and confirmation that there is ongoing employment with the same or a new supervising lawyer.

Rule 5. Obligations of Supervising Lawyer.

A. When supervising a law student practitioner or supervised practitioner, the supervising attorney shall:

1. Assume personal professional responsibility for and supervision of the law student or supervised practitioner;

2. Sign all pleadings;

3. Ensure the law student or supervised practitioner is identified to the client and the tribunal and knowingly accepted by both;

4. Appear with the law student or supervised practitioner in all trials and all other proceedings, except in a proceeding where the client and judge or judicial officer waives the appearance after accepting the representation made by the supervising lawyer that the law student or supervised practitioner is prepared to proceed alone;

5. Provide appropriate supervision and assistance as needed;

6. Send written notice to the law school and the Board if the supervising lawyer terminates the supervisory relationship with the law student or supervised practitioner for any reason; and

7. Abide by all obligations set forth in these Rules.

B. When supervising a student observer, the supervising attorney shall ensure that the student observer has:

1. Been identified as a student and accepted by the client; and

a. Signed a statement certifying the student observer will maintain the confidentiality that a lawyer is required to maintain under Rule 1.6 of the Minnesota Rules of Professional Conduct.

Rule 6. Obligations of Law Student Practitioner.

A. Once certified, the law student practitioner shall take the following actions:

1. Identify himself or herself to each client and tribunal as a law student practitioner and proceed only if accepted by both;

2. Comply with the supervised practice requirements outlined in Rule 5A;

3. Comply with Minnesota Rules of Professional Conduct;

4. Request recertification through his or her law school before the expiration of certification, if eligible; and

5. Ensure that his or her law school files notice to the Board of his or her graduation and, if eligible, requests recertification as a supervised practitioner.

Rule 7. Obligations of Supervised Practitioner.

A. Once certified, the supervised practitioner shall take the following actions:

1. Identify himself or herself to each client and tribunal as a supervised practitioner and proceed only if accepted by both;

2. Comply with the supervised practice requirements outlined in Rule 5A;

3. Comply with the Minnesota Rules of Professional Conduct; and

4. Notify his or her law school if he or she:

a. Registers and takes the bar examination in any jurisdiction;

b. Fails the bar examination in any jurisdiction; or

c. Is admitted in any jurisdiction.

Rule 8. Obligations of Student Observer.

A student observer shall sign and abide by a statement certifying that the student will maintain the confidentiality that a lawyer is required to maintain under Rule 1.6 of the Minnesota Rules of Professional Conduct.

Rule 9. Obligations of the Board.

A. The Board shall:

a. Review the certification applications filed by the law school to confirm eligibility under these Rules;

b. Provide written notice to the law school confirming certification;

c. Post to the website a list of law student practitioners and supervised practitioners and the date that certification is scheduled to expire;

d. Maintain a list of student observers approved under these Rules; and

e. Provide written notice to the law school and remove from the website the names of law student practitioners and supervised practitioners whose licenses have expired or terminated under these Rules.

Rule 10. Period of Certification; Recertification.

If otherwise eligible under these Rules and not precluded by Rule 11:

A. A law student practitioner may be initially certified for a period of 12 months, and may renew certification for a period of 12 months;

B. A law student practitioner may be recertified as a supervised practitioner upon graduation from law school; and

C. A supervised practitioner may be certified for a period of 18 months from the date of degree conferral.

Rule 11. Termination of Certification.

A. Certification as a law student practitioner terminates when the first of the following occurs:

a. Twelve months has elapsed from the most recent certification;

b. The law school, placement entity, or supervising lawyer sends written notice to the Board that the supervising lawyer is no longer willing to supervise the law student practitioner;

c. The student practitioner resigns or is terminated from the qualifying position; or

d. The law school places the law student on academic probation.

B. Certification as a supervised practitioner terminates when the first of the following occurs:

a. The law school, placement entity, or the supervising lawyer sends written notice to the Board that the supervising lawyer is no longer willing to supervise the supervised practitioner;

b. The supervised practitioner resigns or is terminated from the qualifying position;

c. The supervised practitioner is admitted to the bar in any jurisdiction;

d. The supervised practitioner fails the bar examination in any jurisdiction; or

e. 18 months has elapsed from the date of degree conferral.

C. Certification as a student observer terminates when the course ends or the student is placed on academic probation.

Rule 12. Authorized Practice by Legal Paraprofessionals in Pilot Project

Rule 12.01 Scope of Work

An eligible legal paraprofessional may, under the supervision of a member of the bar, provide the following services:

(a) Provide advice to and appear in court on behalf of tenants in housing disputes as defined in Minnesota Statutes, chapter 504B, and Minnesota Statutes, section 484.014. Eligible legal paraprofessionals may only provide such services in district courts that have established a Housing Court or a dedicated calendar for housing disputes, except that eligible legal paraprofessionals shall not appear in Housing Court in the Fourth Judicial District.

(b) Provide advice to and appear in court on behalf of clients in family law cases, but such services shall be limited to advice and hearings related to child-support modifications, parenting-time disputes, and paternity matters. With the approval of the supervising attorney, legal paraprofessionals may also appear in court in family law cases for the following purposes: (1)

default hearings, (2) pretrial hearings, and (3) informal family court proceedings. Legal paraprofessionals may also appear with a client in family law mediations where, in the judgment of the supervising lawyer, the issues are limited to less complex matters, which may include simple property divisions, parenting-time matters, and spousal-support determinations. Under no circumstances shall a legal paraprofessional provide advice or appear in court or at a mediation under this paragraph if the family law case involves allegations of domestic abuse or child abuse.

(c) With authorization from the supervising attorney, prepare and file a limited set of documents identified in Appendix 1 to these rules without the supervising attorney's final review.

Communications between the client and the eligible legal paraprofessional shall be privileged under the same rules that govern the attorney-client privilege and work product doctrine.

For each case where a legal paraprofessional will appear in court on behalf of the client, the certificate of representation for the matter must identify both the supervising attorney and the legal paraprofessional. The legal paraprofessional may sign the certificate of representation, but must include with the filed certificate of representation a statement signed by the supervising attorney that authorizes the legal paraprofessional to appear in court. The signed authorization must identify the types of proceedings for which the legal paraprofessional is authorized to provide services and the starting and ending dates during which the paralegal is authorized to appear in court.

Rule 12.02 Eligible Legal Paraprofessionals

An eligible legal paraprofessional must meet the following requirements:

(a) Education and Work Experience Requirements. To participate in the pilot project, a legal paraprofessional must have the following education or work experience:

(1) an Associate's or Bachelor's Degree in paralegal studies from an institutionally accredited school; or

(2) a paralegal certificate from an institutionally accredited school in addition to an Associate's or Bachelor's degree in any subject from an institutionally accredited school; or

(3) a law degree from an ABA accredited school; or

(4) a high school diploma and 5 years of substantive paralegal experience.

(b) Ethics and Continuing Legal Education Requirements. To participate in the pilot project, a legal paraprofessional must satisfy the following ethics and continuing education requirements:

(1) hold Minnesota Certified Paralegal credentials from the Minnesota Paralegal Association; or

(2) provide proof that the legal paraprofessional has earned ten continuing legal education credits, including two credit hours in ethics, within the two years prior to seeking certification under Rule 12.04(a); or

(3) provide proof that the legal paraprofessional has obtained a paralegal studies degree or certificate, or a juris doctorate within the two years prior to seeking certification under Rule 12.04(a). Such a program must include an ethics component.

(c) Written Agreement with a Supervisory Attorney. To participate in the pilot project, a legal paraprofessional must enter into a written agreement with a licensed Minnesota attorney who agrees to serve as the paralegal's supervisory attorney. The written agreement must set forth the scope and types of work the legal paraprofessional may undertake consistent with the scope of the pilot project

and the steps the supervisory attorney will take to ensure that the paralegal is serving the client's interests.

(d) Roster of Approved Legal Paraprofessionals. To participate in the pilot project, a legal paraprofessional must remain in good standing on the roster of approved legal paraprofessionals established and maintained by the Standing Committee on the Legal Paraprofessional Pilot Project.

Rule 12.03 Supervisory Attorney

The attorney who supervises a legal paraprofessional authorized to participate in the pilot project shall:

(a) be a member in good standing of the bar of this court;

(b) assume personal professional responsibility for and supervision of the legal paraprofessional's work, including court appearances;

(c) assist the legal paraprofessional to the extent necessary, and sign all pleadings;

(d) carry malpractice insurance that will sufficiently cover the attorney's supervision of the legal paraprofessional and the work and actions of the supervised legal paraprofessional, or ensure that the legal paraprofessional has secured adequate malpractice insurance; and

(e) execute a written agreement that establishes the terms of the supervised legal paraprofessional's work and the supervision conditions.

Rule 12.04 Standing Committee for Legal Paraprofessional Pilot Project

The Standing Committee for the Legal Paraprofessional Pilot Project shall establish, in collaboration with the State Court Administrator, procedures as follows:

(a) for certifying legal paraprofessionals as authorized to participate in the pilot project and establishing and maintaining a public roster of legal paraprofessionals eligible to participate in the pilot project;

(b) for evaluating the results and outcome of the pilot project and making further recommendations to the Supreme Court; and

(c) for submitting, reviewing, investigating, and resolving complaints made against legal paraprofessionals and supervising attorneys, including removing legal paraprofessionals from the roster and prohibiting supervising attorneys from participating in the pilot project if there is a good cause to do so. Rostered legal paraprofessionals and supervising attorneys shall cooperate with standing committee investigations and failure to cooperate may be the basis for removal from the pilot project.

(Added March 1, 2021.)

Rules of the Supreme Court on Lawyer Registration

Adopted August 4, 1970
With amendments effective through October 1, 2019

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Preamble

Admission to the bar of the State of Minnesota, disciplinary proceedings, and continuing legal education for members of the legal profession shall be conducted in accordance with rules promulgated by this court.

(Amended effective October 1, 2006.)

Rule 1. Purpose Statement

The purpose of these Rules is to maintain an accurate record of all lawyers and judges licensed in the state of Minnesota, to collect information from registered lawyers and judges annually, and to collect fees to help defray the cost of bar examinations, preadmission investigations, lawyer discipline, a lawyer-client security fund, legal services programs, and lawyers' assistance programs.

(Amended effective October 1, 2006; amended effective July 1, 2010; amended effective July 1, 2018.)

Rule 2. Definitions

A. "Active Status" means a license status for a lawyer or judge who:

(1) has paid the applicable required lawyer registration fee for the current year;

(2) is in compliance with the requirements of the Minnesota State Board of Continuing Legal Education or with Minnesota Judicial Branch policies regarding continuing judicial education;

(3) is not disbarred, suspended, or on disability status pursuant to Rule 28 of the Rules on Lawyers Professional Responsibility;

(4) is in compliance with Rule 1.15 and Appendix 1 of the Minnesota Rules of Professional Conduct regarding trust accounts and has so certified on the Lawyer Registration Statement; and

(5) is in compliance with Rule 22 of these rules.

A lawyer or judge on active status is in good standing and is authorized to practice law in this state.

B. "Inactive Status" means a license status for a lawyer or judge who has elected to be on inactive status pursuant to Rule 6, 7, or 8 of these rules and who:

(1) has paid the applicable required lawyer registration fee for the current year;

(2) is in compliance with the requirements of the Minnesota State Board of Continuing Legal Education or with Minnesota Judicial Branch policies regarding continuing judicial education;

(3) is not disbarred or suspended; and

(4) is in compliance with Rule 1.15 and Appendix 1 of the Minnesota Rules of Professional Conduct regarding trust accounts and has so certified on the Lawyer Registration Statement.

A lawyer or judge on inactive status is in good standing but is not authorized to practice law in this state.

C. "Judge" means any judicial officer, referee, or other hearing officer employed in the judicial branch of the State of Minnesota.

D. "Lawyer" means a person admitted to practice law in this state pursuant to the Rules for Admission to the Bar.

E. "Lawyer Registration Statement" means an electronic or paper document prepared by the Lawyer Registration Office that informs a lawyer or judge of the lawyer registration fee due and on which the lawyer or judge must certify the lawyer or judge's status, compliance with Rule 1.15 and Appendix 1 of the Minnesota Rules of Professional Conduct regarding trust accounts, compliance with Rule 22 of these rules, and provide any other information required by the Court.

F. "Noncompliant Status" means a license status for a lawyer or judge who has not met all of the criteria to be on active status or inactive status. A lawyer or judge who is on noncompliant status is not in good standing and is not authorized to practice law in this state.

G. "Online Registration System" means the web-based lawyer registration system maintained by the Lawyer Registration Office on which lawyers and judges may elect to electronically manage license information, complete the Lawyer Registration Statement, and pay lawyer registration fees, including annual fees.

H. "Private Client." means a client of a lawyer, but for the purpose of reporting professional liability insurance coverage does not include the clients of government lawyers and house counsel.

(Amended August 12, 1980; amended May 18, 1982, effective for payments due after July 1, 1982; amended February 10, 1983; amended January 13, 1984; amended July 25, 1984, effective for payments due after October 1, 1984; amended April 7, 1987, effective for payments due after July 1, 1988; amended May 22, 1990, effective for registrations processed on or after July 1, 1990; amended November 14, 1990, effective for payments due on or after July 1, 1991; amended April 15, 1992, effective for payments due between July 1, 1992 and June 30, 1993; effective for payments due on and after July 1, 1993; amended effective December 3, 1993; amended June 13, 1996, effective for licenses due for renewal on October 1, 1996, and for new licenses issued on or after October 1, 1996; amended February 5, 1997, effective for licenses due for renewal on July 1, 1997, and for new licenses issued on or after July 1, 1997; amended effective August 6, 1997, for licenses being renewed on or after August 6, 1997, and for new licenses issued on or after August 6, 1997, the allocation of fees set by Supreme Court Order C9-81-1206 shall continue in effect until June 30, 1998; allocation continued until further order of the Court by Supreme Court order dated May 20, 1999; amended effective for registration fees due July 1, 2000; amended effective for registration fees due on and after July 1, 2003; amended effective for registration fees due July 1, 2003; amended effective October 1, 2006; amended effective with the registration cycle deadline of January 1, 2008; amended effective with the registration cycle deadline of July 1, 2008; amended effective July 1, 2010; amended effective July 1, 2011; amended effective July 1, 2013; amended effective October 1, 2014; amended effective December 29, 2015; amended effective January 1, 2016; amended effective July 1, 2017; amended effective October 1, 2017; amended effective July 1, 2018.)

Rule 3. Supervisory Authority

Subject to the general direction of the Court in all matters, the State Board of Continuing Legal Education has supervisory authority over the administration of these Rules and may adopt policies, procedures, and forms not inconsistent with these Rules.

(Amended effective October 1, 2006; amended effective July 1, 2018.)

Rule 4. New Lawyer Fee

New lawyers must pay a one-time fee of $40 upon the administration of the Oath of Admission and will be placed on active status. Thereafter, the lawyer must pay an annual registration fee in accordance with these Rules.

(Amended effective October 1, 2006; amended effective December 29, 2015; amended effective July 1, 2018.)

Rule 5. Active Status Fees

A. Admitted to Practice Law Three Years or More. A lawyer or judge on active status who has been admitted to practice law for three years or more in any state, the District of Columbia, or any territory must pay an annual registration fee of $248.

B. Income Less Than $25,000. A lawyer or judge on active status who certifies that the lawyer's or judge's gross income from all sources, excluding the income of a spouse, is less than $25,000 per year must pay an annual registration fee of $220.

C. Admitted to Practice Law Less Than Three Years. A lawyer or judge who has been admitted to practice law less than three years in each and every state, the District of Columbia, or territory in which the lawyer or judge has been admitted, including Minnesota, must pay an annual registration fee of $114.

(Amended effective October 1, 2016; amended effective July 1, 2018.)

Rule 6. Inactive Status Fees

A. General. A lawyer or judge who files with the Lawyer Registration Office on or before the due date for payment of the lawyer's registration fee an affidavit stating that the lawyer or judge (1) is currently in good standing with the Lawyer Registration Office, (2) does not hold judicial office in this state and does not sit by special appointment, and (3) is not engaged in the practice of law in this state, must pay an annual registration fee of $205 to remain in good standing as an inactive Minnesota lawyer.

B. Income Less Than $25,000. A lawyer or judge who files an affidavit in compliance with Rule 6A and who certifies that the lawyer's or judge's gross income from all sources, excluding the income of a spouse, is less than $25,000 per year must pay an annual registration fee of $177 to remain in good standing as an inactive Minnesota lawyer.

(Amended effective October 1, 2006; amended effective July 1, 2010; amended effective July 1, 2018.)

Rule 7. Retired Status: Inactive

A. Retirement Affidavit. A lawyer or judge may file a Retirement Affidavit with the Lawyer Registration Office stating that the lawyer or judge (1) is at least 68 years of age, (2) is in good standing with the Lawyer Registration Office, (3) does not hold judicial office in this state and does not sit by special appointment, and (4) is not engaged in the practice of law in any state, territory, or the District of Columbia.

B. Effect. The filing of a Retirement Affidavit with the Lawyer Registration Office places the lawyer or judge on inactive status and exempts the lawyer or judge from payment of fees while it is effective.

C. Renewal; Expiration. A Retirement Affidavit, once filed, is effective for each succeeding year unless the lawyer or judge transfers to active status pursuant to Rule 9 or resumes the practice of law in another state, territory, or the District of Columbia. A lawyer or judge who no longer meets the requirements of this status must promptly comply with the requirements of active or inactive status, filed a completed Lawyer Registration Statement with the Lawyer Registration Office, and pay the annual registration fee.

D. Emeritus Status: Authorization to Provide Pro Bono Services. Notwithstanding the provisions of Rules 2B and 7B regarding authorization to practice law in this state, a lawyer or judge whose Retirement Affidavit is effective may engage in the pro bono legal representation of pro bono clients if the lawyer or judge complies with Rule 14 of the Rules of the Minnesota State Board of Continuing Legal Education.

(Added February 13, 1986; amended effective July 1, 2001; amended effective August 5, 2003; amended effective July 1, 2005; amended effective October 1, 2006; amended effective July 1, 2010; amended effective July 1, 2018.)

Rule 8. Permanent Disability Status: Inactive

A. Disability Affidavit. A lawyer or judge who is totally disabled may file a Disability Affidavit with the Lawyer Registration Office stating that the lawyer or judge (1) is currently in good standing with the Lawyer Registration Office, (2) does not hold judicial office in this state and does not sit by special appointment, (3) is not engaged in the practice of law in this state, and (4) is totally disabled.

B. Effect. The filing of a Disability Affidavit with the Lawyer Registration Office places the lawyer or judge on inactive status and exempts the lawyer or judge from payment of fees while it is effective.

C. Renewal; Expiration. A Disability Affidavit, once filed, is effective for each succeeding year unless the lawyer or judge transfers to active status pursuant to Rule 9.

(Added effective August 1, 2014; amended effective July 1, 2018.)

Rule 9. Transfer from Inactive Status to Active Status

A. Requirements. To transfer from inactive status to active status, a lawyer or judge must, before practicing law or assuming judicial responsibilities, take each of the following actions:

(1) promptly notify the Lawyer Registration Office of the intention to transfer to active status;

(2) file a completed Lawyer Registration Statement with the Lawyer Registration Office;

(3) pay the applicable active status fee and all accumulated late fees, less any inactive status fee payments previously made for the same registration year;

(4) complete all continuing legal education (CLE) requirements and be transferred to CLE active status;

(5) comply with Rule 1.15 and Appendix 1 of the Minnesota Rules of Professional Conduct regarding trust accounts; and

(6) comply with Rule 22 of these Rules.

B. Transfer. Upon verification that the requirements of this rule have been met, the Lawyer Registration Office will transfer the lawyer or judge to active status.

(Added effective January 1, 2016; amended effective July 1, 2018.)

Rule 10. Allocation of Lawyer Registration Fees

A. Registration Fees. Lawyer registration fees paid pursuant to these Rules will be allocated as follows:

	$248 payments	$220 payments	$205 payments	$177 payments	$114 payments	$40 payments
State Board of Law Examiners	$29	$29	$29	$29	$29	$25
State Board of Continuing Legal Education	$1	$1	$1	$1	$1	$0
Lawyers Professional Responsibility Board	$128	$128	$89	$89	$32	$15
Client Security Fund	$0	$0	$0	$0	$0	$0
Legal Services Advisory Committee (for civil legal services and grant program purposes)	$75	$47	$71	$43	$37	$0
Legal Services Advisory Committee (for a lawyers' assistance program)	$13	$13	$13	$13	$13	$0
Lawyer Registration Office	$2	$2	$2	$2	$2	$0
TOTAL	$248	$220	$205	$177	$114	$40

B. Miscellaneous Fees. Payments for duplicate license cards, certificates of good standing, late penalties, reinstatement fees, paper filing fees, and lists provided pursuant to Rule 23D will be allocated to the Lawyer Registration Office to defray registration costs.

(Added effective July 1, 2018; amended effective October 1, 2019.)

Rule 11. Registration Deadline

A. Due Date. Each lawyer and judge, except retired, disabled, and military lawyers qualifying under Rules 7, 8, and 24, must pay the annual registration fee and file a completed Lawyer Registration Statement with the Lawyer Registration Office on or before the first day of January, April, July, or October of each year, as assigned by the Lawyer Registration Office.

B. Late Penalty. A lawyer's or judge's failure to meet this deadline will result in the Lawyer Registration Office assessing a late penalty of $75.

C. Paper Filing Fee. The Lawyer Registration Office will add a fee of $10 to the annual registration fee of each lawyer or judge who elects not to use the Online Registration System, which must be paid at the time of registration.

(Added effective July 1, 2018.)

Rule 12. Notification of Fee Due

A. Notice. Approximately 30 days before the annual due date, the Lawyer Registration Office will issue a Lawyer Registration Statement to each lawyer then in good standing.

B. Method. The Lawyer Registration Office will use email as the preferred means of notice. Notices will be issued:

(1) to the email address on file with the Lawyer Registration Office; or

(2) if the lawyer or judge has no email address on file with the Lawyer Registration Office or has elected not to use the Online Registration System, to the lawyer's or judge's postal address on file with the Lawyer Registration Office.

C. Exception. The Lawyer Registration Office will not send an annual notice to any lawyer or judge who has filed a Retirement Affidavit or Disability Affidavit that remains effective.

D. Lawyer's Obligation. A lawyer's or judge's failure to receive a Lawyer Registration Statement or a notice of registration will not excuse a lawyer or judge from the obligation to pay all fees due and file a completed Lawyer Registration Statement on or before the due date.

(Added effective July 1, 2018.)

Rule 13. Obligation to Notify of Change in Postal or Email Address

A. Email Address. Each lawyer or judge who uses the Online Registration System must immediately update the online registration profile to reflect any change of email address.

B. Postal Address. Each lawyer or judge must immediately update the online registration profile or notify the Lawyer Registration Office in writing of any change of postal address.

(Added effective July 1, 2018.)

Rule 14. Failure to Comply; Noncompliant Status; Administrative Suspension

A. Noncompliant Status: Suspension. The Lawyer Registration Office will place on noncompliant status any lawyer or judge who fails to meet all of the criteria to be on active or inactive status by the first day of the month following the due date established by Rule 11A. Once placed on noncompliant status, a lawyer's or judge's right to practice law in this state is automatically suspended.

B. Prohibited Conduct. A lawyer or judge on noncompliant status must not practice law in this state and must not hold out himself or herself as authorized to practice law, nor in any manner state or imply that he or she is qualified or authorized to practice law while on noncompliant status. A lawyer or judge who violates this rule is subject to all the penalties and remedies provided by law for the unauthorized practice of law in the State of Minnesota.

(Added effective July 1, 2018.)

Rule 15. Duty to Prohibit Unauthorized Practice

A judge must prohibit persons who are not authorized to practice law from appearing and practicing law in the judge's court.

(Added effective July 1, 2018.)

Rule 16. Reinstatement

A. Requirements. To be reinstated to active status or inactive status, a lawyer or judge who is on noncompliant status must take each of the following actions:

(1) notify the Lawyer Registration Office that the lawyer or judge intends to seek reinstatement;

(2) file a completed Lawyer Registration Statement with the Lawyer Registration Office;

(3) pay all delinquent registration fees for each of the six years prior to the year in which the lawyer or judge seeks reinstatement;

(4) pay the applicable registration fee for the current year;

(5) pay the late penalty required by Rule 11B;

(6) pay a reinstatement fee of $100;

(7) be in compliance with all CLE requirements;

(8) comply with Rule 1.15 and Appendix 1 of the Minnesota Rules of Professional Conduct regarding trust accounts; and

(9) comply with Rule 22 of these Rules.

B. Transfer. Upon verification that the requirements of this rule have been met, the Lawyer Registration Office will transfer the lawyer or judge to active or inactive status.

(Added effective July 1, 2018.)

Rule 17. Waivers

The Lawyer Registration Office may, in hardship cases, reduce or waive payment of delinquent lawyer registration fees, late penalties, and reinstatement fees.

(Added effective July 1, 2018.)

Rule 18. License Card; Certificate of Minnesota Lawyer Registration

A. Active Status. Upon receipt of all fees due under these Rules and a completed Lawyer Registration Statement, the Lawyer Registration Office will issue to each active status lawyer or

judge a license card in a form provided by the Court, displaying the name, license number, and status of the lawyer or judge.

B. Inactive Status. Upon receipt of all fees due under these Rules and a completed Lawyer Registration Statement, the Lawyer Registration Office will issue to each inactive status lawyer or judge, in the year the lawyer or judge elects or is placed on such status, a Certificate of Minnesota Lawyer Registration for Inactive Status.

(Added effective July 1, 2018.)

Rule 19. Certificate of Good Standing

Upon payment of a fee of $50, the Lawyer Registration Office will provide a certificate of good standing to any lawyer or judge who is on active or inactive status.

(Added effective July 1, 2018.)

Rule 20. Special Fund

The Lawyer Registration Office shall deposit all funds collected pursuant to these Rules or from applicants for admission to the bar into a special fund, as desired by the Court, and funds shall be disbursed therefrom only upon vouchers signed by a member of the Court or a representative of State Court Administration to whom the Court has delegated its authority to sign for purpose of this rule.

(Added effective July 1, 2018.)

Rule 21. Nonresident Counsel

Nothing herein will prevent any court in this state from granting special permission to nonresident counsel to appear and participate in a particular action or proceeding in association with an active status lawyer.

(Added effective July 1, 2018.)

Rule 22. Annual Reporting of Professional Liability Insurance Coverage

A. Annual Certification. Each lawyer on active status must certify the following on the Lawyer Registration Statement:

(1) whether the lawyer represents private clients;

(2) if the lawyer represents private clients, whether the lawyer is currently covered by professional liability insurance; and

(3) if the lawyer is covered by professional liability insurance, the name of the primary carrier.

B. Coverage Change. Each lawyer on active status must notify the Lawyer Registration Office by letter or through the Online Registration System within 30 days if the professional liability insurance coverage: (1) lapses, (2) terminates, or (3) is no longer in effect for any reason, unless the coverage is renewed or replaced without substantial interruption.

(Added effective July 1, 2018.)

Rule 23. Access to Lawyer Registration Records

A. Exclusivity. Lawyer registration records are accessible only as provided in this rule or as ordered by the Court.

B. Public Inquiry Concerning Specific Lawyer. Upon inquiry, the Lawyer Registration Office will disclose to any member of the public the name, postal address, admission date, continuing legal education category, current status, professional liability insurance coverage information submitted under Rule 22, and license number of the registered lawyer or judge, provided that each inquiry is limited to a single lawyer or judge.

C. Publicly Available List. The Lawyer Registration Office will, upon request, disclose to any member of the public a list containing the names, cities, and zip codes of all lawyers and judges.

D. Lists Available to Continuing Legal Education Providers and the Courts. Upon written request and payment of $200, the Lawyer Registration Office will issue to any bona fide continuing legal education provider a complete list of the names, postal addresses, admission dates, continuing legal education categories, current statuses, and license numbers of all lawyers and judges. The Lawyer Registration Office may also disclose the same information to courts and judicial districts to provide postal addresses of lawyers and judges for a judicial evaluation program.

E. Client Trust Account Information. The Lawyer Registration Office must not disclose to the public any client trust account information submitted by lawyers and judges as part of the lawyer registration process.

F. Use in Case Management Systems. Lawyer registration records may be imported into case management systems for the purpose of linking lawyers to cases and storing accurate identification information. When imported into a case management system, lawyer registration records may thereafter be disclosed in connection with corresponding case information, provided that bulk distribution of such records complies with Rule 23C of these Rules.

G. Demographic Information. Demographic data collected from lawyers and judges on the Lawyer Registration Statement is not accessible to the public. The Lawyer Registration Office may publish information based on demographic data reported on Lawyer Registration Statements as directed or ordered by the Court.

(Added effective July 1, 2018.)

Rule 24. Exemption for Certain Military Personnel

A. Exemption. The Lawyer Registration Office will not require the payment of the annual registration fee or the filing of a Lawyer Registration Statement by any lawyer or judge who has been ordered into active military service or is outside of the United States and engaged in employment essential to the prosecution of a war or to the national defense as defined by Minnesota Statutes, section 326.56.

B. Expiration. A lawyer or judge who no longer qualifies for exemption under this rule must promptly comply with the requirements of active or inactive status, file a completed Lawyer Registration Statement with the Lawyer Registration Office, and pay the annual registration fee.

(Added effective July 1, 2018.)

Rules of the Minnesota State Board of Continuing Legal Education

Adopted April 17, 2000 Effective July 1, 2000
With amendments effective through January 1, 2021

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TEXT OF RULES

Rule 1. Purpose

The purpose of these Rules is to require that lawyers continue their legal education and professional development throughout the period of their active practice of law; to establish the minimum requirements for continuing legal education; to improve lawyers' knowledge of the law; and through continuing legal education courses, to address the special responsibilities that lawyers as officers of the court have to improve the quality of justice administered by the legal system and the quality of service rendered by the legal profession.

(Amended effective February 1, 2004.)

Rule 2. Definitions

In these Rules,

A. "Approved course" means a course approved by the Board.

B. "Approved legal services provider" means a legal services organization that meets at least one of the following criteria:

(1) Funded by the Legal Services Corporation, the Minnesota Legal Services Advisory Committee; or

(2) Designated by the Minnesota Legal Services Advisory Committee as an approved legal services provider. Eligibility for designation is limited to:

(a) Programs providing pro bono legal representation within 501(c)(3) nonprofit organizations that have as their primary purpose the furnishing of legal services to individuals with limited means.

(b) Law firms, law libraries, or bar associations that conduct programs that have as their primary purpose the furnishing of legal services to individuals with limited means and are under the supervision of a pro bono coordinator or designated lawyer.

(c) Law firms that provide pro bono legal services on behalf of a Minnesota Judicial Branch program, including but not limited to, the Guardian ad Litem Program.

C. "Board" means the State Board of Continuing Legal Education.

D. "Chairperson" means the Chairperson of the Board.

E. "Classroom setting" means a room, including an office, suitably appointed with chairs, writing surfaces, lecterns and other normal accoutrements of a teaching room, which is exclusively devoted to the educational activity being presented.

F. "Course in ethics or professional responsibility" means a course or session within a course that deals with the Minnesota Rules of Professional Conduct, the ABA Model Rules of Professional Conduct, the rules of professional conduct or professional responsibility of other jurisdictions, or the opinions and case law arising from the application of any of the above-specified rules, including a course or session within a course that addresses in a specific way concepts such as professionalism, civility and ethical conduct in the practice of law and in the legal profession.

G. "Course in the elimination of bias in the legal profession and in the practice of law" means a course directly related to the practice of law that is designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

H. "Court" means the Supreme Court of the State of Minnesota.

I. "Director" means the Director of the Board.

J. "Emeritus status" is the status of a lawyer who is on retired status pursuant to Rule 7 of the Rules of the Supreme Court on Lawyer Registration, is not on involuntary restricted status, has submitted an Affidavit of Emeritus Status Appendix IV showing compliance with the requirements of CLE Rule 14, and is authorized by Rule 14 to provide pro bono legal representation to a pro bono client when referred by an approved legal services provider. Emeritus status lawyers remain on restricted status.

K. "Established continuing legal education course sponsor," for the purposes of Rule 5B, is a person or entity regularly retained by firms or organizations for the purpose of presenting continuing legal education programs, which is completely independent of the firm or organization for whose members the continuing legal education course is presented.

L. "Fee" means funds payable to the Minnesota State Board of Continuing Legal Education.

M. "In-house course" means a course sponsored by a single private law firm, a single corporation or financial institution, or by a single federal, state or local governmental agency for lawyers who are members or employees of any of the above organizations.

N. "Involuntary restricted status" means the status of a lawyer licensed in Minnesota who is not in compliance with the educational and reporting requirements of these Rules and who has been placed involuntarily in that status by order of the Court. See Rule 12 for additional provisions.

O. "Laboratory setting" means a mock courtroom, law office, negotiation table, or other simulated setting in which demonstrations are given, roleplaying is carried out or lawyers' activities are taught by example or participation.

P. "Law and literature course" means a course that meets the requirements of Rules 4D and 5A, based upon a literary text and designed to generate discussion, insight, and learning about topics such as the practice of law, the history and philosophy of law, rhetoric, lawyers' professional or ethical responsibilities, professional development, and the elimination of bias in the legal profession and in the practice of law.

Q. "Moderator" means an individual, knowledgeable in the topic or topics addressed by the course, who guides the discussion and answers questions related to the material presented.

R. "On-demand course" means archived CLE programming that meets all the requirements of Rule 5A and is available to participants at any time.

S. "Participant" means a lawyer licensed in Minnesota attending an approved course and actively engaged in the subject matter being presented.

T. "Pro bono client" means an individual, who is not a corporation or other organizational entity, and who has been referred to the lawyer by an approved legal services provider or by a state or federal court program.

U. "Pro bono legal representation" means providing legal representation to a pro bono client without compensation, expectation of compensation, or other direct or indirect pecuniary gain.

V. "Professional development course" means a course or session within a course designed to enhance the development and performance of lawyers by addressing issues such as career satisfaction and renewal, stress management, mental or emotional health, substance abuse, and gambling addiction. Professional development courses do not include individual or group therapy sessions.

W. "Restricted status" means the status of a lawyer licensed in Minnesota who has voluntarily chosen not to comply with the educational and reporting requirements of these Rules. See Rule 12 for additional provisions.

X. "Submit" means to communicate information to the Board office in writing or electronic submission:

(1) through the Board's Online Attorney and Sponsor Integrated System (OASIS);

(2) by regular U.S. mail; or

(3) by delivery.

Y. "Law office management course" is a course or session within a course designed to enhance the efficient and effective management of the law office by addressing topics of mentoring, staff development, and technology related to a law office.

(Amended effective February 1, 2004; amended effective July 1, 2008; amended effective February 1, 2010; amended effective July 1, 2010; amended effective July 1, 2013; amended effective July 1, 2014; amended effective July 1, 2016; amended effective July 1, 2018.)

Rule 3. State Board of Continuing Legal Education

A. Membership of the Board. The court shall appoint 12 members and a Chairperson. The membership of the Board shall consist of:

(1) three members of the public;

(2) one member who is a district court judge;

(3) six lawyer members who are nominated by the Minnesota State Bar Association; and

(4) three lawyer members who are nominated by the Court.

B. Terms of Members. Appointments shall be for staggered three-year terms, with no member serving more than two three-year terms, and each member serving until a successor is appointed.

C. Officers of the Board.

(1) Chairperson. The Chairperson of the Board shall be appointed by the Court for such time as it shall designate and shall serve at the pleasure of the Court.

(2) Vice Chairperson. A Vice Chairperson shall be designated by the Chairperson and shall maintain the minutes of meetings of the Board.

D. Authority of the Board. Subject to the general direction of the Court in all matters, the Board:

(1) shall have supervisory authority over the administration of these Rules, shall approve courses and programs which satisfy the educational requirements of these Rules, and shall have authority to grant waivers of strict compliance with these Rules or extensions of time deadlines provided in these Rules in cases of hardship or other compelling reasons;

(2) shall have supervisory authority over the administration of the Rules of the Supreme Court on Lawyer Registration; and

(3) may adopt policies and forms not inconsistent with these Rules or the Rules of the Supreme Court on Lawyer Registration governing the conduct of business and performance of its duties.

E. Board Procedures. Robert's Rules of Order shall govern the conduct of Board meetings where practicable.

F. Confidentiality. Unless otherwise directed by the Court, the files, records, and proceedings of the Board, as they may relate to or arise out of any failure of an active lawyer to satisfy the continuing legal education requirements, shall be deemed confidential and shall not be disclosed except in furtherance of the Board's duties, or upon request of the lawyer affected, or as they may be introduced in evidence or otherwise produced in proceedings in accordance with these Rules.

G. Persons with Disabilities. The Board shall administer these Rules in a manner consistent with state and federal laws prohibiting discrimination against persons with disabilities and to make reasonable modifications in any policies, practices, and procedures that might otherwise deny equal access to individuals with disabilities.

H. Payment of Expenses. The Chairperson, the Vice Chairperson and other members of the Board shall serve without compensation, but shall be paid reasonable and necessary expenses certified to have been incurred in the performance of their duties.

(Amended effective February 1, 2004; amended effective February 1, 2010; amended effective August 1, 2014.)

Rule 4. Applying for Credit; Fees

A. Course Approval and Fee Information. No segment of any course shall be approved in more than one credit category. In applying for course approval, a sponsoring agency or lawyer shall submit to the Board an application for course approval (see Appendix I) and include the following:

(1) Name and contact information from the sponsor;

(2) Title of the program under consideration;

(3) City and state where the program is held;

(4) Names and credentials of the speakers, including those of persons designated to act as moderators for video or satellite programs;

(5) Type of presentation;

(6) Agenda or course schedule showing beginning and ending times of each session and the date(s) on which the program is presented;

(7) For each segment of the course, credit may be requested in one of the following categories:

(a) standard, including professional development and law office management

(b) ethics and/or professional responsibility

(c) elimination of bias.

(8) Fees.

(a) A fee in the amount of $35 shall be paid when an application for course approval is submitted by means other than through the Board's Online Attorney and Sponsor Integrated System (OASIS).

(b) A fee in the amount of $20 shall be paid when an application for course approval is submitted electronically through the Board's Online Attorney and Sponsor Integrated System (OASIS).

(c) Fees for course approval may be subject to waiver under the provisions of Rule 3D(1).

(d) A fee is not required when submitting an application for either of the following types of courses meeting Rule 4 and Rule 5 requirements:

(i) a previously approved course that has been recorded and is replayed in its entirety with a live moderator present during the scheduled question and answer period of the program; or

(ii) a live course 60 minutes or less in duration.

B. Professional Responsibility or Ethics: General Treatment. Every application for course approval must include:

(1) A description of the general treatment of professional responsibility or ethical considerations; or

(2) An explanation of why professional responsibility or ethical considerations are not included.

C. Sanctions for Failure to Include Ethics. If, in the opinion of the Board, the general treatment of professional responsibility or legal ethics topics within courses approved as standard continuing legal education is inadequate without satisfactory explanation, the Board may refuse to grant full credit for all hours in attendance, impose a deduction from credit hours which would otherwise be granted, and in the case of persistent refusal to cover these topics, refuse to grant further credit for courses offered by the sponsor.

D. Law and Literature. A "law and literature course" that otherwise meets the course approval requirements set forth in Rule 5A will be approved for credit if the application for course approval includes the following:

(1) A narrative describing the course learning goals and discussion topics.

(2) Evidence that program registrants are instructed to read the designated literary text prior to attending the course.

No credit will be granted for the time that participants spend reading the designated literary text prior to attending the course.

E. Notice of Credit. The Board shall inform the sponsor or applicant of the number and type of credit hours granted or denied. This information will also be posted on the Board's Web site.

(Amended effective February 1, 2004; amended effective February 1, 2010; amended effective July 1, 2014; amended effective January 1, 2016; amended effective July 1, 2016.)

Rule 5. Standards for Course Approval

A. General Standards. A course must meet the following standards before approval is granted.

(1) The course shall have current, significant intellectual or practical content, and shall be presented in a high-quality manner permitting participants to hear all of the audio and see all of the video portions of the program, including presentations, audience questions, responses to questions, embedded videos, and other program materials.

(2) The course shall deal primarily with matter directly related to the practice of law, the professional responsibility or ethical obligations of lawyers, the elimination of bias in the legal profession and in the practice of law, law office management, or the professional development of lawyers.

(3) The course shall be taught by faculty members qualified by practical or academic experience to teach the specified subject matter. Legal subjects shall be taught by lawyers.

(4) Any written materials should be thorough, high quality, readable, carefully prepared, and distributed to all participants at or before the time the course is offered.

(5) The course shall be presented and attended in a suitable classroom or laboratory setting. A course presented via video recording, simultaneous broadcast, teleconference, or audiotape, or available on-demand or by podcast, may be approved provided that it complies with Rule 6E and a faculty member or moderator is accessible to all participants, either in person or via electronic means, allowing all participants to have access to and participate in the question and answer session. No course will be approved which involves solely correspondence work or self-study.

(6) Credit will not normally be given for speeches at luncheons or banquets.

(7) A list of all participants shall be maintained by the course sponsor and transmitted to the Board upon request, following the presentation of the course.

(8) Credit shall be awarded on the basis of one credit hour for each 60 minutes of instruction at an approved course.

(9) A lawyer shall not receive credit for any course attended before being admitted to practice law in Minnesota, but one so admitted may receive credit of one hour for each 60 minutes actually spent in attendance, for attending for credit or as an auditor a regular course offered by a law school approved by the American Bar Association.

(10) Notwithstanding the provisions of paragraph (9) above, a person who takes approved courses or teaches in an approved course after sitting for the Minnesota Bar Examination, but before admission to practice, may claim credit for the courses taken or the teaching done, if he or she passes that bar examination.

B. Standards for Course Approval for In-House Courses.

(1) An in-house course as defined in Rule 2M will be approved if:

(a) The requirements of Rule 5A and other applicable Rules are met;

(b) 25 percent of the hours of approved instruction are taught by instructors having no continuing relationship or employment with the sponsoring firm, department, financial institution or agency; and

(c) Notice of the course is given to enough outside lawyers so that the audience can potentially be composed of at least 25 percent participants who are not lawyers working in or for the sponsoring firm, department, institution or agency.

(2) An in-house course as defined in Rule 2M that is presented and controlled by an established continuing legal education course sponsor as defined in Rule 2K, may be approved for credit, notwithstanding the fact that the course does not comply with requirements of Rule 5B(1)(b) and (c) above.

(3) An in-house course as defined in Rule 2M shall not be approved for credit if it is presented primarily for clients or clients' counsel.

(Amended effective February 1, 2004; amended effective February 1, 2010; amended effective July 1, 2013; amended effective July 1, 2014.)

Rule 6. Special Categories of Credit

A. Ethics and Professional Responsibility. To be approved for ethics credit, the courses or sessions within the courses approved must meet the following requirements:

(1) Be at least 30 minutes in length; and

(2) Be separately identified as ethics or professional responsibility on the course agenda and on the Course Approval Form at Appendix I.

B. Elimination of Bias in the Legal Profession and in the Practice of Law. To be approved for elimination of bias credit, the courses or sessions within such courses must meet the following requirements:

(1) Be at least 60 minutes in length;

(2) Be identified on the application as fulfilling the elimination of bias requirement and be accompanied by a narrative describing how the course or sessions of the course meet one or more of the learning goals as described in the Course Approval Form at Appendix I;

(3) Focus on issues in the legal profession and in the practice of law and not issues of bias in society in general; and

(4) Not include courses on the substantive law of illegal discrimination unless such courses meet one or more of the learning goals for elimination of bias courses set forth in the Course Approval Form at Appendix I.

C. Pro Bono Legal Representation. A lawyer may claim one hour of standard CLE credit for every six hours of pro bono legal representation as defined by Rule 2U that the lawyer provides to a pro bono client as defined by Rule 2T in a legal matter that has been referred to the lawyer by an approved legal services provider as defined by Rule 2B or by a state court or federal court program. No more than six hours of credit may be claimed per reporting period by a lawyer for pro bono legal representation. In order to receive CLE credit the lawyer must submit an Affidavit of Pro Bono Representation to the Board (see Appendix II).

D. On-Demand Courses. A lawyer may claim up to 30 hours of credit within the 45-hour CLE period for on-demand courses as defined in Rule 2R, subject to the following provisions:

(1) The course meets all other requirements of Rules 2, 5, and 6;

(2) The course sponsor agrees to have one or more faculty members accessible to all participants via electronic or other means through the 24-month period during which the program is approved for Minnesota CLE credit;

(3) The course sponsor or course applicant completes and submits to the Board an Application for Course Approval; and

(4) The approval for an on-demand course is valid for 24 months after the date of approval by the Board office.

(Amended effective February 1, 2004; amended effective July 1, 2008; amended effective February 1, 2010; amended effective July 1, 2013; amended effective July 1, 2014; amended effective July 1, 2016; amended effective January 1, 2021.)

Rule 7. Other Credit

A. Teaching Credit. Credit for teaching in an approved, live (not previously recorded) course shall be awarded to presenting faculty on the basis of one credit for each 60 minutes spent by the faculty preparing the presentation and materials for the course and teaching the course. No credit shall be awarded for teaching directed primarily to persons preparing for admission to practice law. A lawyer seeking credit for teaching and preparation for teaching shall submit to the Board all information called for on the Affidavit of CLE Compliance at Appendix III.

B. Courses at Universities. Courses that are part of a regular curriculum at a college or university, other than a law school, may be approved for a maximum of 15 hours per course when the lawyer requesting approval submits evidence supporting the conclusion that the course meets the Rule 5A(1) through (5) criteria and that it is directly related to the requesting lawyer's practice of law. Teaching credit shall not be awarded for courses approved under this paragraph.

C. Retroactive Credit. A lawyer, or a course sponsor, may seek retroactive approval of courses by submitting the necessary information and fees required in Rule 4A. (See Course Approval Form at Appendix I.)

(Amended effective February 1, 2004; amended effective February 1, 2010; amended effective July 1, 2014.)

Rule 8. Announcement of Approval

Any person may announce, as to an approved course: This course has been approved by the Minnesota State Board of Continuing Legal Education for ..... hours in the following category or categories of credit:

(a) standard continuing legal education;

(b) ethics or professional responsibility continuing legal education; or

(c) elimination of bias continuing legal education.

(Amended effective February 1, 2004; amended effective February 1, 2010; amended effective July 1, 2016.)

Rule 9. Affidavit of CLE Compliance

A. Contents of Affidavit. To maintain active status, a lawyer shall report participation in no fewer than 45 credit hours of approved continuing legal education courses within a single reporting period that are in compliance with the provisions of Rule 9B. A lawyer may report the credits through the Board's Online Attorney and Sponsor Integrated System (OASIS) or by Affidavit of CLE Compliance (Appendix III). Effective July 1, 2010, the Affidavit of CLE Compliance (Appendix III) must be accompanied by a $10 processing fee. There is no processing fee for submission through OASIS.

B. Special Categories of Credit. Lawyers must report:

(1) no fewer than three hours of approved courses in ethics or professional responsibility;

(2) no fewer than two hours of approved courses in the elimination of bias in the legal profession and in the practice of law;

(3) no more than six hours of credit for pro bono legal representation provided pursuant to Rule 6C and reported by Appendix II; and

(4) no more than 30 hours of credit for on-demand courses.

C. Timely Affidavit. The affidavit must be received by the Board office or postmarked no later than August 31 following the close of the final year of the three-year period specified by the Lawyer Registration Office as a lawyer's continuing legal education category. Electronic affidavits must be submitted on or before August 31.

D. Late Affidavit Fee. A lawyer who submits an Affidavit of CLE Compliance after the deadline specified in paragraph C above, but before issuance of a notice of noncompliance, shall submit along with the late affidavit a late filing fee in the amount of $75. This fee is payable notwithstanding the Board's grant of an extension of time. Additional late fees will not be charged for late affidavits filed within a single reporting period.

E. Notice of Noncompliance Fee. A lawyer who submits an Affidavit of CLE Compliance after the Board has issued a notice of noncompliance, but before the Court has issued an order placing the lawyer on involuntary restricted status, shall submit along with the affidavit a notice of noncompliance fee in the amount of $200.

F. Active Duty Military Service. A lawyer called to active duty military service who requests an extension of time to complete CLE requirements because of active duty military service shall be granted an extension of at least six months from the date of return from active duty status. Upon request, the Board shall grant a waiver of a late filing fee or a notice of non-compliance fee assessed as a result of the lawyer's active duty military status.

(Amended effective February 1, 2004; amended effective February 1, 2010; amended effective July 1, 2014; amended effective July 1, 2016; amended effective January 1, 2021.)

Rule 10. Director's Determinations and Board Review

A. Director's Determinations. The Director has the following authority and responsibility:

(1) To respond in writing to written requests for course approval, giving reasons for the determination;

(2) To grant credit to lawyers for participating in or teaching approved courses;

(3) To grant or deny requests for transfer, waiver, extension of time deadlines or interpretation of these Rules; and

(4) To inform the Board about determinations made since the Board's last meeting, together with observations and comments relating to matters under the Board's jurisdiction.

B. Board Review. A lawyer or sponsoring agency affected by an adverse determination of the Director may request Board review of the determination and may present information to the Board in writing and in person. The Board may take such action as it deems appropriate and shall advise the lawyer or sponsoring agency of its determination.

(Amended effective February 1, 2004; amended effective February 1, 2010; amended effective July 1, 2014.)

Rule 11. Notice of Noncompliance

A. Notice Required. The Director shall send a notice of noncompliance to any lawyer who:

(1) Fails to meet the requirements of these Rules; and

(2) Fails to request and obtain an extension of time in which to file an Affidavit of CLE Compliance as required by these Rules.

B. Service of Notice. The notice shall be sent by regular mail to the lawyer's address of record with the Lawyer Registration Office.

C. Contents of Notice. The notice shall state the nature of the noncompliance and shall inform the lawyer of the right to request a hearing within 30 days of the mailing of the notice, the right to be represented by counsel, and the right to present witnesses and evidence.

D. Effect of Notice. If no hearing is requested, the Director's determination of noncompliance shall become final and shall be reported to the Court with the recommendation that the lawyer be placed on involuntary restricted status.

E. Board Hearing. If a hearing is requested, the following apply:

(1) The Board may employ special counsel;

(2) The Chairperson shall preside at the hearing, which may be held before the entire Board or a committee appointed by the Chairperson, and shall make necessary rulings; and

(3) The hearing shall be recorded and a transcript shall be provided to the lawyer at a reasonable cost.

F. Decision. Following the hearing, the Board shall issue a written decision. If the lawyer is determined to be in noncompliance with these Rules, the Board may recommend to the Court that the lawyer be placed on involuntary restricted status or take other appropriate action.

G. Petition for Review. A lawyer who is adversely affected by the decision of the Board may appeal to the Court by filing a petition for review with the Clerk of Appellate Courts within 20 days of receipt by the lawyer of the decision together with proof of service of the petition on the Director. The petition shall state briefly the facts that form the basis for the petition and the lawyer's reasons for believing the Court should review the decision. Within 20 days of service of the petition, the Board shall serve and file a response to the petition and a copy of the final decision of the Board. Thereupon, the Court shall give such direction, hold such hearings and issue such orders as it may in its discretion deem appropriate.

(Amended effective February 1, 2004; amended effective February 1, 2010.)

Rule 12. Restricted and Involuntary Restricted Status

A. Election of Restricted Status. A lawyer duly admitted to practice in this state may elect restricted status as defined in Rule 2W by sending written notice of such election to the Director, except that a referee or judicial officer of any court of record of the State of Minnesota or lawyer employed and serving as attorney or legal counsel for any employer, including any governmental unit of the State of Minnesota, is not eligible to apply for restricted status. A lawyer on restricted status shall not be required to satisfy the educational and reporting requirements of these Rules.

B. Restrictions Imposed. A lawyer on restricted or involuntary restricted status shall be subject to the following provisions and restrictions:

(1) The lawyer may not engage in the practice of law or represent any person or entity in any legal matter or proceedings within the State of Minnesota other than himself or herself, except as provided in Rule 14.

(2) The name of the lawyer may not appear on law firm letterhead without a qualification that the lawyer's Minnesota license is restricted. A law firm name may continue to include the lawyer's name if the name was included prior to the lawyer's placement on restricted or involuntary restricted status. The lawyer may not be listed "of counsel" or otherwise be represented to clients or others as being able to undertake legal business.

(3) The lawyer may not have a financial interest in a law firm that is a professional corporation.

C. Transfer from Restricted Status to Active Status.

(1) **Notice to Director and Fee.** Unless otherwise ordered by the Court, a lawyer on restricted status who desires to resume active status shall notify the Director in writing of the lawyer's intention to resume active status and submit a transfer fee of $125.

(2) **Transfer Requirements.** A lawyer on restricted status shall be transferred to active status upon the Director's determination that the lawyer has fulfilled the requirements of paragraph (a) or paragraph (b) below:

(a) **Automatic transfer requirements.** The lawyer has completed the number of CLE hours that the lawyer would have had to complete to meet reporting requirements and to be current on a proportional basis had the lawyer not been on restricted status, or

(b) **Discretionary transfer requirements.** The lawyer has completed such lesser requirements as the Director determines are adequate provided that the number of hours completed total no fewer than 45 hours during the three years immediately preceding transfer. The Director will specify no more than 90 hours. Determinations will be made subject to the criteria set forth in paragraph (c) below. The Director shall report to the Board at its next meeting the terms and conditions upon which each transfer to active status was made.

(c) **Discretionary transfer criteria.** The Director may transfer a lawyer to active status when the lawyer has fulfilled appropriate CLE conditions precedent or agreed to fulfill appropriate CLE conditions subsequent as determined by the Director. In making discretionary transfer decisions, the Director will take the following into consideration:

i. The number of CLE hours the lawyer has taken in the past;

ii. The lawyer's other educational activity;

iii. The lawyer's practice of law in another jurisdiction;

iv. The lawyer's law-related work other than the practice of law;

v. Whether the lawyer acted reasonably in not anticipating the need to take the appropriate number of CLE hours before being transferred from active status; and

vi. Whether the lawyer has demonstrated circumstances of hardship or other compelling reasons that show the lawyer should be transferred to active status before completing the appropriate number of CLE hours.

(3) **Failure to Abide by Transfer Conditions.** A lawyer who fails to comply with the conditions of transfer shall be restored to restricted status upon notice from the Director sent by regular mail to the lawyer's last known address.

(4) **Appeal to the Board.** Upon written request from a lawyer, the Board shall review the Director's determination of transfer requirements and notify the lawyer in writing regarding the outcome of that review.

D. Transfer from Involuntary Restricted Status to Active Status.

(1) **Notice to Director and Fee.** Unless otherwise ordered by the Court, a lawyer on involuntary restricted status who desires to resume active status shall notify the Director in writing of the lawyer's intention to resume active status and submit a transfer fee of $250.

(2) **Transfer Requirements.** Unless otherwise ordered by the Court, the Director shall recommend to the Court that a lawyer on involuntary restricted status be transferred to active status upon the Director's determination that the lawyer has completed the number of CLE hours that the lawyer would have had to complete to meet reporting requirements and to be current on a proportional basis had the lawyer not been placed on involuntary restricted status, or that the lawyer has completed such lesser requirements as the Director determines are adequate provided that the number of hours completed total no fewer than 45 hours during the three years immediately preceding transfer. The Director will specify no more than 90 hours. The Director may recommend to the Court that a lawyer on involuntary restricted status be transferred to active status when the lawyer has fulfilled appropriate CLE conditions precedent or agreed to fulfill appropriate CLE conditions subsequent as determined by the Director. In making such a recommendation, the Director will take into consideration the discretionary transfer criteria in section C(2)(c) of this Rule.

(3) **Appeal to the Board.** Upon written request from a lawyer, the Board shall review the Director's determination of transfer requirements and notify the lawyer in writing regarding the outcome of that review.

E. Transfer from Involuntary Restricted Status to Voluntary Restricted Status. Unless otherwise ordered by the Court, a lawyer on involuntary restricted status who desires to transfer to restricted status shall notify the Director in writing and submit a transfer fee in the amount of $250.

(Amended effective February 1, 2004; amended effective February 1, 2010; amended effective July 1, 2013; amended effective July 1, 2014.)

Rule 13. Retired Status

A. Transfer from Active Status to Retired Status. A lawyer who files a Retirement Affidavit with the Lawyer Registration Office and who is placed on inactive status by the Lawyer Registration Office shall be transferred to voluntary restricted status by the CLE Board.

B. Transfer from Retired Status to Active Status. In addition to notifying the Lawyer Registration Office of the lawyer's intention to transfer to active status, a lawyer must satisfy the provision of Rule 12C before the Board returns the lawyer to active CLE status.

(Amended effective February 1, 2010.)

Rule 14. Emeritus Status

A. Qualification. A lawyer who is on retired status pursuant to Rule 7 of the Rules of the Supreme Court on Lawyer Registration and who has elected restricted status under the CLE Rules may elect emeritus status by complying with the requirements for emeritus status listed below.

B. Limitation of Practice. A lawyer on emeritus status is authorized solely to provide pro bono legal representation to a pro bono client in a matter referred to the lawyer by an approved legal services provider.

C. Contents of Emeritus Affidavit Appendix IV. Prior to representation as described by Rule 14B, the lawyer shall complete and submit to the Board an affidavit of emeritus status (Appendix IV) which shall include the following:

(1) The list of approved CLE courses that the lawyer has attended or participated in during the 90-day period immediately preceding the submission of the emeritus affidavit, totaling no fewer than 5 credit hours of approved continuing legal education courses, and including:

(a) 3 credit hours in approved courses in the substantive area of law in which the lawyer intends to be performing pro bono services;

(b) 1 credit hour approved as ethics or professional responsibility; and

(c) 1 credit hour approved as elimination of bias in the legal profession and in the practice of law.

(2) A certification signed by the emeritus lawyer, affirming that if the lawyer provides pro bono representation in multiple areas such as in a brief advice clinic, the lawyer shall obtain the necessary training and resources to provide those services in a competent and ethical manner.

D. Transfer to Emeritus Status. When a lawyer submits an affidavit of emeritus status, the Board office shall verify the information and shall, for a period of three years, maintain a public posting on the Board's website listing the lawyer's name as being on emeritus status.

E. Expiration of Emeritus Status. Emeritus status shall expire three years from the date that the lawyer's name is posted. A lawyer shall not represent clients after expiration of the lawyer's emeritus status.

F. Renewal of Emeritus Status. Prior to the expiration of a lawyer's emeritus status, the lawyer may renew emeritus status by submitting to the Board an affidavit of emeritus status (Appendix IV) which shall include the following:

(1) The list of approved CLE courses attended or participated in by the lawyer during the three-year period immediately preceding the submission of the emeritus affidavit, totaling no fewer than 5 credit hours of approved continuing legal education courses, and including:

(a) 3 credit hours in approved courses in the substantive area of law in which the lawyer intends to perform pro bono services;

(b) 1 credit hour approved as ethics or professional responsibility; and

(c) 1 credit hour approved as elimination of bias in the legal profession and in the practice of law.

(2) A certification signed by the emeritus lawyer, affirming that when the lawyer provides pro bono representation in multiple areas such as in a brief advice clinic, the lawyer shall obtain the necessary training and resources to provide those services in a competent and ethical manner.

(Added effective July 1, 2013; amended effective July 1, 2018.)

Appendix I: COURSE APPROVAL FORM

MINNESOTA STATE BOARD OF CONTINUING LEGAL EDUCATION

180 E. 5th Street, Suite 950, St. Paul, Minnesota 55101

651-297-7100 www.mbcle.state.mn.us

The Rules of the Board of Continuing Legal Education are on the Board's website, and published in the Court Rules volume of the Minnesota Statutes.

Fee: Check one of the following:

_____ $35 fee is enclosed. Rule 4A(8)

_____ No fee is required because the program is a video replay of a previously approved course. Rule 4A(8)(a)

_____ No fee is required because the program is 1 hour or less in length. Rule 4A(8)(b)

_____

Sponsor Name

_____

Street Address City State Zip Code

_____

Contact Person Email Address Telephone (area code)

Submitted by: Name _____ Check one: ___course sponsor or ___ course participant

Describe the expected audience or target audience to which the program is being marketed (if known): _____

The course sponsor must maintain a list of Minnesota participants and make this list available to the Board upon request. See Rule 5A(7). If you are the course sponsor, do you agree to maintain a list of Minnesota participants and make it available to the Board upon request?

Yes _____ No _____

_____

Course Title

_____

Date(s) of course City and State course held

Check those which apply:

____ live lecture ____ in-house course (see Rule 5(B)) ____ demonstration, role play, mock trial

____ study tour ____ videotape/film (must have live faculty member*) ____ live teleconference

____ live satellite broadcast or webcast (question and answer participation)

You must attach the program agenda or course schedule. You must include the following information:

(1) Start and stop times for each course segment. Rule 4A(6)

(2) Names and brief description of the credentials of the speakers and faculty members, including those persons designated to act as moderators for video or satellite programs. Rule 4A(4).

(3) The type of CLE credit for which approval is sought for each segment of the course. Types of CLE Credit, include:

- Standard CLE (Rule 5A)
- Ethics CLE (Rule 2H, Rule 5Aand Rule 6A)
- Elimination of Bias CLE (Rule 2G, Rule 5Aand Rule 6B)
- Law Office Management CLE (Rule 5Aand Rule 6C)
- Professional Development CLE (Rule 2T and Rule 5A)

(4) Optional: Course materials distributed to participants may, but are not required to be, submitted along with the application. Do not send voluminous materials.

Credit is awarded on the basis of one hour for each 60 minutes of actual classroom training.

When a course has been submitted for approval and not yet approved, sponsors must advertise credit as "applied for."

ETHICS OR PROFESSIONAL RESPONSIBILITY CONTENT: Check one of the following to describe the treatment of **ethics or professional responsibility** content in the program:

___ A portion of the program 30 minutes or more in length addresses **ethics or professional responsibility** and is marked as "ethics" on the attached program agenda. Rule 6A.

___ Ethics or professional responsibility concerns are addressed throughout the program but no distinct segment is 30 minutes or more in length. Rule 4B(1).

___ No portion of the program addresses ethics or professional responsibility. Attached is an explanation of why ethics or professional responsibility content is not present in this program. Rule 4B(2).

ELIMINATION OF BIAS EDUCATION: Check on of the following to indicate whether Elimination of Bias credit is requested for this program:

___ No credit for Elimination of Bias is sought. See attached narrative.

___ Elimination of Bias is sought and a narrative is attached.

CLE rule 6B describes course requirements for CLE on the "elimination of bias in the legal profession and in the practice of law." In order to be afforded **"elimination of bias" credit, such courses or segments of courses must be at least 60 minutes in length.** The course must focus on issues in the legal profession and in the practice of law and not on issues of bias in society in general. If elimination of bias credit is sought for some portion of this course, please do the following:

1. Review the "elimination of bias" goals listed below and the definition of elimination of bias course under Rule 2G and the requirements of Rule 6B;
2. Mark the segment or segments on the agenda that the sponsor believes fulfill these requirements; and

3. Attach a brief written narrative describing how the course segment or segments meet one or more of the "Learning Goals for Minnesota Elimination of Bias Courses" listed below.

Please note that courses or segments of courses may address ethics and elimination of bias topics. A sponsor may seek credit in one category or the other, but a course or segment will not be accredited in both categories simultaneously. The Board will determine in which category credit will be granted, based upon the course description and the sponsor's narrative.

LEARNING GOALS FOR MINNESOTA ELIMINATION OF BIAS COURSES

Courses accredited as "elimination of bias" must be at least **60 continuous minutes in duration**, must be directly related to the practice of law, must meet all other requirements of Rule 5 of the CLE rules and must be designed to meet one or more of the following goals:

1. to educate lawyers about the elimination of bias or prejudice in the legal profession, in the practice of law, and/or in the administration of justice;
2. to educate lawyers regarding barriers to hiring, retention, promotion, professional development and full participation of lawyers of color, women, and those persons referenced in the "course in the elimination of bias in the legal profession and in the practice of law" definition (Rule 2I) of the CLE rules, both in the public and private sector of the legal profession and in the practice of law; or
3. to educate lawyers about the problems identified in the Supreme Court's Race Bias and Gender Fairness Task Force Reports, as well as in other studies, reports or treatises which describe bias and prejudice in the legal profession, in the practice of law, and/or in the administration of justice.

Yes _____ No _____ If the application is seeking elimination of bias credit, I have attached a narrative explanation describing how the elimination of bias learning goals are met and how the program focuses on elimination of bias in the legal profession and not merely elimination of bias in society in general.

LAW AND LITERATURE

Yes _____ No _____ This law and literature course is accompanied by documentation on Rule 4D.

Yes _____ No _____ This law and literature course was designed to meet the standard CLE requirements set forth in Rule 5A.

(Amended effective February 12, 2004; amended effective February 1, 2010.)

Appendix II: AFFIDAVIT OF PRO BONO REPRESENTATION

MINNESOTA STATE BOARD OF CONTINUING LEGAL EDUCATION

180 East 5th Street, Suite 950

St. Paul, MN 55101

651-297-7100 www.mbcle.state.mn.us

An Affidavit of Pro Bono Representation must be submitted for each legal services provider for whom you provided pro bono service.

License Number: _____ Name: _____

CLE Category:[1] Firm Name: _____

□ 1 Street Address:[2] _____

□ 2 Street Address: _____

□ 3 City, State, and Zip: _____

□ Other _____ Email:[3] _____

Telephone: _____

Name and address of referring legal services provider: _____

_____

Name and phone number of contact person at legal services provider: _____

_____

Type(s) of Representation Provided:

□ Consumer □ Economic Assistance □ Education □ Employment

□ Family Law □ Health □ Housing □ Immigration/Refugee □ Individual Rights

□ Juvenile □ Seniors □ Wills or Probate □ Other: _____

Date range of representation:[4] _____

# of hours of pro bono legal representation: _____ # of CLE credit hours claimed:[5] _____

By signing this affidavit I swear (affirm) that:

- I give permission to the Minnesota Board of Continuing Legal Education to contact the referring legal services provider to verify that the information I have provided is true and accurate; and
- I understand that the Board may use this information that I have provided six (6) hours of pro bono legal representation for each one (1) hour of CLE credit claimed and that the pro bono legal representation provided qualifies in all respects under Rules 2R, 2S, 2T, and 6D.

Lawyer Signature: _____ Date: _____

_____

[1] Your CLE reporting category is found on your lawyer license card issued by the Lawyer Registration Office and online at http://www.mncourts.gov/mars/.
[2] Address changes must be made by sending a written notice to the Lawyer Registration Office, 25 Rev. Dr. Martin Luther King Jr. Blvd., Room 305, St. Paul, Minnesota 55155.
[3] An email confirmation will be sent after credits are approved or denied.
[4] If representation covers more than one reporting period, submit a separate Affidavit of Pro Bono Representation for each reporting period. If representation is ongoing, write "ongoing" as the date representation ended.
[5] You may claim 1 hour of CLE credit for every 6 hours of pro bono legal representation up to a maximum of 6 hours. Record credits in increments no smaller than .25 hours.

(Added effective July 1, 2008; amended effective February 1, 2010.)

Appendix III: AFFIDAVIT OF CLE COMPLIANCE

MINNESOTA STATE BOARD OF CONTINUING LEGAL EDUCATION

180 E. 5th Street, Suite 950 St. Paul, Minnesota 55101

651-297-7100 www.mbcle.state.mn.us

As of July 1, 2010, a $10 processing fee must be submitted with this form.

The processing fee is not assessed when you file courses online through OASIS (www.mbcle.state.mn.us)

License Number: _____ Name: _____

CLE Category: _____ Address: _____

Period Covered: _____ Address: _____

Telephone number: _____ Email Address: _____

I swear that the information below is an accurate and complete record of my attendance.

Lawyer Signature _____ Date: _____

ATTENDANCE INFORMATION

			# OF HOURS				
SPONSORING AGENCY	**COURSE TITLE AND EVENT CODE (if known)**	**COURSE DATE(S)**	**STANRD CLE**	**LAW OFFICE MNGT**	**PROF DVLPMT**	**ETHICS**	**ELIMN OF BIAS**
1.							
2.							
3.							
4.							

Please retain a copy of this form for your records.

(USE ADDITIONAL SHEETS IF NECESSARY)

HOURS OF PREPARATION AND TEACHING INFORMATION

			# OF HOURS				
SPONSORING AGENCY	**COURSE TITLE AND EVENT CODE (if known)**	**COURSE DATE(S)**	**STANRD CLE**	**LAW OFFICE MNGT**	**PROF DVLPMT**	**ETHICS**	**ELIMN OF BIAS**
1.							
2.							
3.							
4.							

Please note:

- Lawyers must report at least 45 credit hours, including 3 hours of Ethics CLE and at least 2 hours of Elimination of Bias CLE. You may report more than the minimum required number of ethics and bias credits. All ethics and bias credits count towards your 45 hour requirement.
- The event code assigned to the program and the number and type of credits awarded to the program are found at the Board's website at http://www.mbcle.state.mn.us. A course segment will be accredited as one credit type, and will not be accredited as both Ethics and Elimination of Bias.
- Law Office Management credits are capped at 6 hours per 3-year period.

• There is no limit on the number of hours of professional development CLE you may claim.

COMPLIANCE INSTRUCTIONS

REQUIREMENTS: The CLE Rules require that each lawyer holding an active license complete a minimum of 45 credit hours including at least 3 ethics credits and 2 elimination of bias credits every three years. A reporting category number is assigned to each lawyer and is printed on the face of the lawyer's license card.

CLE 1 reports attendance from {July 1, 2009 to June 30, 2012};

CLE 2 reports attendance from {July 1, 2007 to June 30, 2010};

CLE 3 reports attendance from {July 1, 2008 to June 30, 2011};

The credits must be taken during the reporting period. There is no carry-over of credits from one reporting period to the next.

DEADLINES: Courses should be completed prior to June 30 of the reporting year. A lawyer due to report must file an affidavit of attendance with the Board (or enter the information through OASIS) on or before August 31 of the lawyer's reporting year. Postmarks dated on or before the due date are accepted as timely. A $75.00 late filing fee must be included with your Affidavit if you are filing after the deadline, even if an extension has been granted.

SANCTIONS: The Board will issue a Notice of Noncompliance pursuant to Rule 9E to a lawyer who fails to comply with the Rule requirements. A lawyer who submits and affidavit after the issuance of a Notice of Noncompliance must submit a $200.00 Notice of Noncompliance fee. Failure to comply with the CLE requirements after receiving the Notice of Noncompliance will result in the lawyer's license being placed on involuntary restricted status by Court order.

RECORDKEEPING: It is the responsibility of the lawyer to maintain records of courses taken and to submit reports to file promptly with the Board. The lawyer may submit the affidavit of CLE compliance (1) by mail; (2) by bringing the affidavit to the Board office; (3) by reporting attendance electronically through the Board's online reporting system (OASIS); or (4) by submitting a signed copy of a certificate of completion from the course sponsor in lieu of an affidavit.

Affidavit processing may be delayed if the affidavit does not correctly and completely identify the course sponsor, the course title, and the dates of each program. To expedite processing, include the course event codes on the affidavit form. Event codes for approved or pending courses can be found on the Board's website www.mbcle.state.mn.us.

ELIGIBLE COURSES: A lawyer will not receive credit for a course unless the course has been accredited under Minnesota CLE rules. Courses accredited by other states may not be accredited in Minnesota. In addition to the course accreditation criteria in CLE Rule 5, courses should comply with the Rule 4 ethical content requirement. The Course Accreditation Forms may be submitted either by the sponsor or by a lawyer who attended the course.

RESTRICTED STATUS: A lawyer who no longer practices law in Minnesota may elect voluntary restricted status pursuant to Rule 12A by sending a written request to the Board. A lawyer on restricted status is not required to comply with the CLE attendance requirements.

INFORMATION: The course event code and the number and type of course credits may be found on the Board's website (www.mbcle.state.mn.us) under the "Search Courses" tab. A lawyer may also request this information from the course sponsor. Forms and other information, including frequently asked questions, can also be found on the Board's website.

CLAIMING TEACHING CREDIT

CLE Rule 7A states as follows regarding teaching credit: Credit for teaching in an accredited course shall be awarded to presenting faculty on the basis of one credit for each 60 minutes spent by the faculty preparing the presentation and materials for the course and teaching the course. No credit shall be awarded for teaching directed primarily to persons preparing for admission to practice law. A lawyer seeking credit for teaching and preparation for teaching shall submit to the Board all information called for on the affidavit of CLE Compliance at Appendix III.

Under the provisions of Rule 7A, a lawyer presenting a course may claim the time spent in presenting the course and time in attendance at the course, as well as the hours spent in preparation for the presentation. There is no limit to the number of hours that may be claimed for preparation.

Credit for teaching and/or preparation can be claimed only when the lawyer actually **teaches** in an accredited course. A lawyer who prepares materials that are distributed at the course but who does not present during the program cannot claim credit for the lawyer's scholarly efforts in preparing the program or in preparing materials for the program. Lawyers may not claim credit for writing a law review article or other scholarly articles.

A lawyer who organizes the program **cannot** claim time for administrative tasks, including identifying and persuading speakers to participate, arranging for the written materials or conferring with speakers about the allocation of responsibility for subject areas.

(Amended effective February 1, 2010.)

Appendix IV: AFFIDAVIT OF EMERITUS STATUS

MINNESOTA STATE BOARD OF CONTINUING LEGAL EDUCATION

180 E. 5th Street, Suite 950, St. Paul, Minnesota 55101

651-297-7100 www.mbcle.state.mn.us

For details regarding Emeritus Status, see Rule 2J and Rule 14 of the Rules of the Minnesota State Board of Continuing Legal Education at www.mbcle.state.mn.us/MBCLE/pages/rules.asp.

Name: _____ License Number: _____

Email:[1] _____ Phone: _____

Address:[2] _____

City: _____ State: _____ Zip: _____

□ First Affidavit for Emeritus Status □ Renewal Affidavit for Emeritus Status

ATTENDANCE INFORMATION

SPONSORING AGENCY	COURSE TITLE & EVENT CODE (if known)	COURSE DATE(S)	STANRD CLE	ETHICS	ELIMN OF BIAS
1.					
2.					
3.					
4.					
5.					
		Hours Total:			

Name & address of referring legal services provider:

_____

_____

Name & phone # of contact person at legal services provider:

_____

_____

Area of law in which pro bono service will be provided:

_____

_____

Please initial the following statements and sign this affidavit swearing (affirming) to the following:

_____ I have filed a Retirement Affidavit with the Lawyer Registration Office pursuant to Rule 2(C)(5) of the Rules on Lawyer Registration and am on Inactive-Retired Status with Lawyer Registration. Record can be verified at: www.mncourts.gov/mars/default.aspx

_____ I am on voluntary (not involuntary) restricted status. See CLE Rules 2N and 2V.

_____ At least 3 of the substantive law CLE credit hours listed above are in the substantive area of law in which I intend to provide pro bono legal representation, and I affirm that prior to providing legal advice or representation in another substantive law area I will obtain 3 substantive credit hours in that area of law.

_____ If providing pro bono service in a brief advice clinic, I will have received or will obtain the necessary training to provide that service.

_____ I give permission to the Minnesota Board of Continuing Legal Education to verify this information by contacting the approved legal services provider.

_____ I understand that the Emeritus Status will expire 3 years from the day the CLE Board posts my Emeritus status on the CLE website, unless prior to the expiration I file an Emeritus Status renewal Affidavit in compliance with Rule 14.

_____ I shall limit my practice to providing pro bono legal representation to one or more pro bono clients in matters referred to me by an approved legal services provider.

Lawyer Signature: _____ Date: _____

A lawyer on Emeritus Status who seeks to transfer to Active Status must follow the requirements of Rule 12 (and return to an active fee status with the Lawyer Registration Office) See Rule 12 of the CLE Rules.

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[1] An email confirmation will be sent after the lawyer is placed on Emeritus Status.

[2] Address changes must be made in writing by sending notice to the Lawyer Registration Office, 25 Rev. Dr. Martin Luther King Jr. Blvd., Room 305, St. Paul, Minnesota 55155.

Rules of Lawyer Trust Account Board

Repealed effective July 1, 2010

Rules of the Minnesota State Board of Legal Certification

Effective March 14, 2002

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TEXT OF RULES

PREAMBLE:

The following rules establish procedures for continued operation of the Minnesota State Board of Legal Certification. As of the effective date of their adoption by the Minnesota Supreme Court, these rules will supersede and replace the original Plan of the Supreme Court (adopted October 10, 1985) and the Rules of the Board of Legal Certification (adopted December 15, 1986).

100. Purpose of the Board of Legal Certification

The purpose of the Minnesota State Board of Legal Certification (Board) is to accredit agencies that certify lawyers as specialists, so that public access to appropriate legal services may be enhanced. In carrying out its purpose, the Board shall provide information about certification of lawyers as specialists for the benefit of the profession and the public.

101. Definitions

a. "Applicant agency" means an entity that submits a proposal to become an accredited agency in a field of law.

b. "Applicant lawyer" means a lawyer who seeks certification from an accredited agency.

c. "Board" means the Minnesota State Board of Legal Certification.

d. "Certified lawyer" means a lawyer who has received certification from an accredited agency.

e. "Accredited agency" means an entity that has applied for and has been accredited by the Board to certify lawyers in a field of law.

f. "Rules" means rules promulgated by the Supreme Court governing the Minnesota State Board of Legal Certification.

g. "Field of law" means a field of legal practice that is identified, defined and approved by the Board as appropriate for specialist designation.

102. Composition of the Board

a. The Supreme Court shall appoint twelve (12) members of the Board, of whom nine (9) shall have active licenses to practice law in the state and represent various fields of legal practice. Three (3) attorney members shall be nominated by the Minnesota State Bar Association and three (3) shall be non-attorney public members. The Supreme Court shall designate a lawyer member as chairperson and the Board may elect other officers, including a vice-chair who will serve in the absence of the chairperson.

b. Members shall be appointed for three-year terms. The terms of one (1) public member and one (1) member nominated by the State Bar shall expire each year. Any vacancy on the Board shall be filled by the Supreme Court by appointment for the unexpired term. No member may serve more than two (2) three-year terms with the exception of the sitting chairperson, who may be appointed for a third three-year term or such additional period as the court may order.

c. Members shall serve without compensation, but shall be paid their regular and necessary expenses.

103. Meetings

a. Meetings of the Board shall be held at regular intervals and at times and places set by the chairperson.

b. Meetings are open to the public except when the Board is considering:

(1) personnel matters;

(2) examination materials;

(3) legal advice from its counsel;

(4) any information which is confidential or private under Rule 106b(5).

c. The Board may make determinations by a majority vote of those present at a meeting, with the exception of the following which must be made by a majority of the members of the Board:

(1) recommendations for changes in rules of the Board;

(2) determinations to approve or rescind an agency's accreditation.

d. The Board may meet by conference call or make determinations through mail vote.

104. Conflict of Interest

A Board member who in the past twelve (12) months has served in a decision-making capacity for an agency that is, or seeks to become, a Minnesota accredited agency shall disclose such service to the Board and shall recuse him/herself from any vote relating to the agency's accreditation.

105. Powers of the Board

The Board is authorized:

a. To identify, define and approve a definition or definitions of a field of law, on its own motion, or in response to an application or applications from an applicant agency.

b. To develop standards, application verification procedures, testing procedures, and other criteria for reviewing and evaluating applicant and accredited agencies.

c. To take one of the following actions with regard to an applicant agency or accredited agency:

(1) grant accreditation or conditional accreditation;

(2) deny accreditation;

(3) rescind accreditation.

d. To review and evaluate the programs and examinations of an applicant agency or accredited agency to assure compliance with these rules.

e. To investigate an applicant agency or accredited agency concerning matters contained in the application and, if necessary, to conduct an on-site inspection.

f. To require reports and other information from the applicant agency or accredited agency regarding the certification program.

g. To monitor lawyer representations concerning certification status.

h. To adopt policies and charge fees reasonably related to the certification program and not inconsistent with these rules.

106. Duties of the Board

a. The chairperson shall convene the Board as necessary, and between meetings shall act on behalf of the Board. The chairperson may appoint subcommittees of the Board.

b. The Board shall:

(1) Hire a Director to administer the Board's programs and to perform duties as assigned by the Board.

(2) Provide information about lawyer certification programs for the benefit of the profession and the public.

(3) Disseminate accurate information regarding lawyers' certification status.

(4) File with the Supreme Court an annual report detailing the work of the Board.

(5) Report to the Lawyers Professional Responsibility Board any lawyers who may violate the provisions of these rules or other rules concerning certification matters.

(6) Maintain appropriate records of accredited agencies and certified lawyers.

(7) Communicate with groups, agencies, and other boards and organizations regarding matters of common interest.

(8) Make rulings on applications, conduct hearings, and take other actions as are necessary to carry out the Board's purpose.

107. Board Disposition of Agency Applications

The Board shall take the following action with respect to the agency application:

a. Grant the agency's application for accreditation.

b. Grant conditional accreditation to an applicant agency subject to receipt of evidence showing satisfaction of specific conditions imposed by the Board.

c. Deny the agency's application and issue a written decision stating the reasons for the denial. An application may be denied for any of the following reasons:

(1) The agency fails to meet criteria set forth in these rules.

(2) The application is incomplete, investigation has revealed inaccuracies, or the applicant agency has been uncooperative in the initial review.

(3) The proposed definition of the field of law is rejected by the Board.

(4) The agency's goals and methods of measuring attainment of those goals are not appropriate or not well defined.

(5) The agency's tests and other performance criteria are inadequate.

d. Rescind the agency's previously granted accreditation if the agency is found to have violated these rules.

108. Application After Denial

An applicant agency denied accreditation may not reapply for twelve (12) months following the Board's disposition.

109. Board Hearings

An agency whose application has been denied pursuant to Rule 107c or rescinded pursuant to Rule 107d has the right to a hearing if the agency makes a written request for hearing within twenty (20) days of its receipt of notice of denial. The hearing shall be promptly scheduled before the full Board or a subcommittee thereof appointed by the chairperson. Representatives of the agency may appear personally or through counsel and may present evidence and testimony. The hearing shall

be recorded. Following the hearing, the Board shall provide written notice of its decision setting forth reasons for the decision.

110. Board Information Disclosure

The Board has the following public disclosure obligations:

a. To provide public notice when an accreditation application has been received for a particular field of law.

b. To make available for inspection, at reasonable times, applications for accreditation submitted by applicant agencies.

c. To publish the definitions of each field of law and the address and telephone number of each applicant agency or accredited agency, along with the name of the agency's contact person.

111. Board Specified Fees

The Board shall periodically set and publish a schedule of reasonable fees for the costs incidental to administering these rules.

112. Threshold Criteria for Agency Authority to Certify

An agency applying to the Board for accreditation in a field of law must complete an agency application form and submit it along with necessary documentation and fees to the Board office. An applicant agency must meet the following criteria:

a. Have among its permanent staff, operating officers, or Board of Directors at least three (3) legal practitioners not from the same law firm or business whose daily work fulfills the substantial involvement requirement in the field of law as defined in Rule 114b, and whose role in the agency includes evaluating the qualifications of specialist lawyers.

b. Provide evidence that the certification program is available to lawyers without discrimination because of a lawyers's geographic location or non-membership in an organization.

c. Provide evidence that the applicant agency is an ongoing entity capable of operating an acceptable certification program for an indefinite period of time.

d. Agree to publicize the certification program in a manner designed to reach lawyers licensed to practice in Minnesota who may be interested in the field of law.

e. Agree to be subject to Minnesota law and rules regulating lawyers.

f. Agree to keep statistical records concerning certified lawyers and to report such numbers to the Board on an annual basis.

g. Agree to provide written notice to each certified specialist stating that if he/she communicates the specialty status, he/she shall do so in a manner consistent with the requirements of Rule 119 of these rules, as well as with the requirements of Rule 7.4 of the Minnesota Rules of Professional Conduct.

h. Provide evidence that the following have been adopted and are in use in the agency:

(1) Procedures that will assure the periodic review and recertification of certified lawyers.

(2) Due process procedures for lawyers denied certification.

(3) Procedures that will assure the periodic evaluation of the certification program.

(4) Procedures that will assure accurate ongoing reporting to the Board concerning the certification program.

113. Agency Obligations

An accredited agency must provide the Board with the following:

a. At least 60 days prior to the effective date, a written summary of proposed changes in an accredited agency's standards for certification.

b. An updated lawyer application and such other information as the Board may require.

c. Within 30 days of certifying lawyers, a roster listing the certified lawyers' names, Minnesota license numbers, home and work addresses, and other states where licensed; this document must be verified by the director of the accredited agency, and accompanied by the initial fee.

d. Within 30 days of denying or revoking a lawyer's certification, the name, Minnesota license number, work address, and reason for denial or revocation.

e. By January 20 of each year, an annual statistical and summary report showing the progress of its certification program.

f. By January 20 of each year, or at such time as is mutually agreed, submit payment of annual attorneys' fees as defined in Rule 111.

114. Agency Standards for Certifying Lawyers

Accredited agencies shall certify lawyers for a period not exceeding six (6) years. The following are minimum standards for lawyers certified by an accredited agency:

a. The lawyer is licensed and on active status in Minnesota.

b. The lawyer shows by independent evidence "substantial involvement" in the field of law during the three-year period immediately preceding certification. "Substantial involvement" means at least 25% of the lawyer's practice is spent in the field of law of the certification.

c. The accredited agency verifies at least three (3) written peer recommendations, in addition to references from lawyers or judges unrelated to and not in legal practice with the lawyer.

d. The lawyer successfully completes a written examination of the lawyer's knowledge of the substantive, procedural and related ethical law in the field of law; grading standards for the examination must be made available prior to test administration; model answers must be made available for inspection after test results are determined.

e. The lawyer provides evidence of having completed at least 20 hours every three (3) years of approved CLE activity that is directly related to the certified specialist's field of law, sufficiently rigorous and otherwise appropriate for a certified specialist.

f. The lawyer provides evidence of being current with CLE credit requirements for every state of active licensure and having been current throughout the period of application or recertification.

g. The lawyer signs a release to share information with the Board from the files of the accredited agency.

115. Agency Standards for Automatic/Discretionary Denial or Revocation of Lawyer Certification

a. Automatic denial or revocation. An agency will automatically deny or revoke a lawyer's certification upon the occurrence of any of the following:

(1) A finding by the agency that the lawyer failed to complete 20 CLE credits in the field of law within his/her three-year reporting period or the equivalent CLE reporting period.

(2) Suspension or disbarment of the lawyer from the practice of law in any jurisdiction in which the lawyer is licensed.

(3) Suspension of the lawyer for nonpayment of license fees or for failing to maintain mandatory CLE credits in any jurisdiction in which the lawyer is licensed.

(4) Failure of the lawyer to complete satisfactorily the recertification process or failure to pay the required certification fees.

(5) Written notice from the lawyer that he/she seeks decertification.

b. Discretionary denial or revocation of certification. An agency may deny or revoke a lawyer's certification if:

(1) The lawyer fails to cooperate with the certifying agency, or submits false or misleading information during the certification or recertification process.

(2) The lawyer's record contains evidence of personal or professional misconduct which is inconsistent with the standards of conduct adopted by the accredited agency.

(3) The lawyer falsely or improperly announces the field of law or certification.

116. Renewal of Agency Accreditation Agencies are required to apply to the Board for accreditation renewal at least once every three (3) years.

a. The following must be submitted to the Board for renewal of accreditation:

(1) A completed application form seeking renewal of accreditation and a fee in an amount specified by Rule 111.

(2) A written critique of the agency's own certification program, which includes written evaluations from certified lawyers and a written analysis of achievement of program goals.

(3) Copies of examinations and model answers for the most recent examinations administered since accreditation or last renewal of accreditation.

(4) Statistical information concerning the progress of the program since the original accreditation or last renewal of accreditation.

b. The Board may require the agency to provide the following as part of the accreditation renewal process:

(1) Opportunity for Board representatives to conduct an on-site inspection of the agency.

(2) An audit of agency records by Board representatives, including a review of certified lawyers' references.

(3) Opportunity for a personal meeting with representatives of the accredited agency.

(4) Such other information as is needed to evaluate the certification program.

117. Agency Announcement of Accreditation

An accredited agency may publish the following statement with respect to its certification status: "This agency is accredited by the Minnesota State Board of Legal Certification to certify lawyers as specialists in the field of [name of field of law]." If conditional accreditation has been granted publication of that fact must be made.

118. Agency Announcement of Revocation of Accreditation

In the event that the Board revokes the accreditation of an agency, the agency shall contact each certified lawyer and shall advise him/her to cease all advertising, announcements and publications referencing Board authorization.

119. Lawyer Announcement of Certification

The certified lawyer may announce that he/she is a certified specialist in a field of law and that the agency granting the certification is an agency accredited by the Minnesota State Board of Legal Certification to certify lawyers as specialists in a designated field of law. The lawyer shall not represent, either expressly or implicitly, that the specialist status is conferred by the Minnesota Supreme Court.

120. Immunity

The Board and its members, employees, and agents are immune from civil liability for any acts conducted in the course of their official duties.

Rules of the Minnesota Client Security Board

Effective July 1, 1987
With amendments effective through July 1, 2020

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TEXT OF RULES

Rule 1. Rules Governing the Client Security Board

1.01 Membership of the Board

The Supreme Court shall appoint seven members to the Client Security Board. Five shall be lawyers actively practicing in the state, three of whom shall be nominees of the Minnesota State Bar Association, and two shall be public members. The Board shall elect a Chair from its members.

(Amended effective July 1, 1995.)

1.02 Terms of Office

Two members of the Board shall be appointed for one year, two members for two years and three members for three years, and thereafter appointments shall be for three-year terms. The terms of public members shall be staggered. Any vacancy on the Board shall be filled by appointment of the Supreme Court for the unexpired term. No member may serve more than two consecutive three-year terms, in addition to any additional shorter term for which the person was originally appointed.

(Amended effective July 1, 1995.)

1.03 Reimbursement

Members shall serve without compensation, but shall be paid their regular and necessary expenses.

1.04 Meetings

The Board shall meet at least annually, and at other times as scheduled by the Chair. A quorum shall consist of four members.

(Amended effective July 1, 1995.)

1.05 Immunity

The Board and its staff are absolutely immune from civil liability for all acts in the course of their official duties.

1.06 Duties of the Board

The Board is authorized:

a. To administer and operate the Minnesota Client Security Fund, pursuant to statutes, court rules and internal procedures;

b. To make final determinations on disbursement from the Fund;

c. To recommend to the Supreme Court limits for the amount payable per claim against the Fund, and for total reimbursement for claims arising from one lawyer's misconduct;

d. To undertake investigation of claims, coordinating with the Office of Lawyers Professional Responsibility;

e. To recommend to the Supreme Court means available to cover extraordinary losses in excess of the assets of the Fund;

f. To annually establish an administrative budget which may be paid from the Fund;

g. To enforce subrogation and lien rights of the Fund;

h. To sue in the name of the Fund for restitution of payments made pursuant to claims;

i. To cooperate in educational activities for theft prevention and risk management, and for remedial services for problem lawyers;

j. To certify the financial condition of the Fund;

k. To employ and compensate consultants, legal counsel and employees;

l. To adopt internal rules of procedure not inconsistent with these rules, and make recommendations to the Supreme Court on rule changes.

1.07 Conflict of Interest

a. A member of the Board who has or had a lawyer-client relationship or financial relationship with a claimant or the lawyer subject to the claim shall not participate in the investigation or adjudication of the matter.

b. A member of the Board who is a member or of counsel in the same law firm or company as the lawyer subject to the claim shall not participate in the matter.

1.08 Duties of the Director

The Board may recommend to the Supreme Court a Director, who shall serve at the pleasure of the Court, to perform duties assigned to the Board, including but not limited to:

a. Screening claims, coordinating investigations with the Lawyers Professional Responsibility Board, and presenting claims at Board hearings;

b. Coordinating enforcement of liens, restitution and subrogation rights of the Fund;

c. Maintaining records of the Board, suitable for audit of the Fund;

d. Keeping current on legal and procedural developments of the client security funds in other states;

e. Performing other duties as assigned by the Board.

(Amended effective July 1, 1995.)

1.09 Confidentiality

Claims, proceedings, records, and reports involving claims for reimbursement are confidential except as provided below.

a. After authorization of the reimbursement, the Board shall publicize the nature of the claim, the amount of reimbursement and the name of the lawyer. The name and the address of the claimant shall not be publicized by the Board unless specific permission has been granted by the claimant.

b. This Rule shall not be construed to deny access to relevant information by professional disciplinary, law enforcement, or client security agencies in furtherance of their duties. The Board may also use such relevant information as is necessary to pursue subrogation rights pursuant to Rule 3.17.

c. Statistical information such as the number of claims presented to the Board, the number and amount of claims paid, the restitution collected from each attorney, the subrogation lawsuits filed, and the amount in the Fund shall be public information.

(Amended effective July 1, 2020.)

1.10 Annual Report

At least once a year and at such other times as the Supreme Court may order, the Board shall file with the Court a written report reviewing in detail the administration of the Fund, its operation, its assets and liabilities.

Rule 2. Rules Governing the Fund

2.01 Establishment of the Fund

There is created a Minnesota Client Security Fund to aid those persons directly injured by the dishonest conduct of any lawyer during an attorney-client or fiduciary relationship.

(Amended effective July 1, 1995.)

2.02 Financing

The Fund shall be financed from:

a. Lawyer restitution and subrogation for claims paid;

b. Gifts and contributions;

c. Upon order of the Supreme Court, assessments of licensed lawyers.

2.03 Ordering, Reinstatement and Cancellation of Assessments

The Supreme Court may order, reinstate or cancel the collection of assessments after review of the financial condition of the Fund certified by the Client Security Board in its annual report.

2.04 Failure to Pay Assessment

Upon failure to pay the assessment when due, the lawyer's right to practice law in the state shall be automatically suspended.

(Amended effective July 1, 1995.)

2.05 Disbursements from the Fund

a. Upon written authorization of the Board, claims may be paid from the Fund.

b. The Board shall annually prepare an administrative budget to be approved by the Supreme Court, from which the Board may pay necessary expenses.

c. The fund shall be invested as provided by law.

(Amended effective July 1, 1995.)

Rule 3. Rules Governing the Claim Process

3.01 Claims Payment Discretionary

Reimbursements of losses by the Board are discretionary, and not a matter of right. No person shall have a right in the Fund as a third party beneficiary or otherwise either before or after allowance of a claim.

3.02 Filing Claims

The Board shall consider a claim filed on forms provided by the Board if:

a. The claimant experienced a loss of money or property, excluding loss of profit, consequential damages, interest, and costs of recovery; and

b. The loss of the claimant arose out of and during the course of a lawyer-client relationship of a matter in this state, or a fiduciary relationship between the lawyer and the claimant which arose out of a lawyer-client relationship in this state; and

c. The loss was caused by the dishonest conduct of the lawyer and the claim was not based on negligence; and

d. There is no reasonably available collateral source for reimbursement to the claimant, such as insurance, surety, bond, or some other fund; and

e. Reasonable efforts have been made by the claimant to exhaust administrative and civil remedies; and

f. The lawyer was licensed to practice law in this state at the time of the misconduct or was licensed within three years prior to the misconduct; and

g. Less than three years have elapsed between the filing of the claim and the date the claimant knew or should have known of the dishonest conduct; and

h. The dishonest conduct occurred on or after January 1, 1964.

i. As used in these Rules, "dishonest conduct" means 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, including but not limited to:

(1) Refusal or failure to refund an advance fee when the lawyer performed no work whatever, or an insignificant portion of the services that he or she agreed to perform. All other instances of a lawyer failing to return an unearned fee or the disputed portion of a fee are outside the scope of the Fund.

(2) Obtaining money or property from a client representing that it was to be used for investment purposes when no such investment was made. The failure of an investment to perform as represented to, or anticipated by, the applicant is outside the scope of the Fund.

(j) For purposes of these Rules, including but not limited to those acts set out in Rule 3.02(i), all payments made by the lawyer to the client following the dishonest conduct, however denominated by the lawyer, shall be treated as restitution of principal.

(Amended effective July 1, 1995.)

3.03 Privileged Complaints

A claim filed pursuant to these Rules is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the claimant.

3.04 Screening Claims

The Chair shall designate a Board member or the Director to screen a claim and to advise the lawyer named in the claim that the lawyer has 20 days to respond to the Board in writing. The lawyer shall receive a copy of the claim, by first class mail sent to the lawyer's last known address.

(Amended effective July 1, 1995.)

3.05 Claim Investigation

If a claim is sufficient, the Director shall promptly request the Office of Lawyers Professional Responsibility to furnish a report on any investigation of the matter.

3.06 Rights of Lawyer Subject to Claim

A lawyer subject to a claim shall be entitled to receive a copy of the claim, to respond to the claim in writing to the Board, and to request an evidentiary hearing as provided by Rule 3.12.

(Amended effective July 1, 1995.)

3.07 Lawyer Cooperation

It shall be the duty of a lawyer subject to a claim to cooperate and comply with the reasonable requests of the Board and the Board's investigator by furnishing papers, documents or objects, providing a full written explanation, and appearing at conferences and hearings. The lawyer's failure to respond or cooperate may be reported to the Office of Lawyers Professional Responsibility for possible discipline under this rule.

(Amended effective July 1, 1995.)

3.08 Subpoena

With the approval of the Board Chair, the Director may subpoena and take testimony of any person believed to possess information concerning a claim.

(Amended effective July 1, 1995.)

3.09 Jursidiction

The district court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the investigation of a claim.

(Amended effective July 1, 1995.)

3.10 Action after Investigation

No later than 120 days from the date of the notification to the Office of Lawyers Professional Responsibility, whether or not the Director has received a report from the Lawyers Professional Responsibility Board, the Chair shall determine whether additional investigation should be conducted, a hearing should be held, or a determination may be immediately rendered.

(Amended effective July 1, 1995.)

3.11 Panels

The Chair may divide the Board into panels, each consisting of not less than three Board members and at least one of whom is a nonlawyer, and shall designate a Chair for each panel. A panel may be assigned to consider a matter and make a recommendation to the entire Board, or may conduct a hearing under Rule 3.12 in lieu of a hearing before the entire Board.

(Amended effective July 1, 1995.)

3.12 Request for Hearing

If the claimant or the lawyer subject to the claim requests an evidentiary hearing, the Chair may order such a hearing, defer the matter for further investigation or until any proceedings of the Lawyers Professional Responsibility Board have been completed, or deny the request.

(Amended effective July 1, 1995.)

3.13 Hearing

If an evidentiary hearing under Rule 3.12 is ordered, both the claimant and the lawyer and their representatives may appear. The hearing shall be recorded and preserved for five years.

(Amended effective July 1, 1995.)

3.14 Determination

a. Payment of a claim from the Fund shall be made only on affirmative vote of four members.

b. In determining the amount of any payment, the Board may consider:

(1) Monies available and likely to become available to the Fund for payment of claims;

(2) Size and number of claims presented and likely to be presented in the future;

(3) The amount of a claimant's loss compared with losses sustained by others;

(4) The comparative hardship suffered by a claimant because of a loss;

(5) The total amount of losses caused by the dishonest conduct of any one lawyer;

(6) The culpability or negligence of the claimant contributing to the loss;

(7) The extent to which there is a collateral source for reimbursement to the claimant;

(8) The effort made by the claimant to exhaust administrative and civil remedies;

(9) Other factors as appear to be just and proper.

c. The maximum amount that may be paid to any claimant for a single claim is $150,000. In exceptional circumstances, the Board may allow a greater or lesser amount based on the factors set forth in subdivision (b) of this rule.

d. The Board may, in its discretion, award interest on any award at the rate of interest payable under Minnesota Statutes, section 549.049, from the date of filing the claim. In determining the amount of interest, if any, the Board may consider:

(1) The length of time between filing the claim and its disposition;

(2) The existence of third-party litigation; and

(3) Other factors outside the control of the Board.

(Amended effective December 3, 1993, the amendments to Rule 3.14 are retroactively effective for all claims filed on or after February 1, 1993; amended effective July 1, 1995; amended effective September 14, 2001.)

3.15 Denial

If the Board determines that the criteria of Rule 3.02 have not been met, the Board may deny the claim. The Board may authorize payment of that portion of a claim proved, although the entire amount of a claim is undetermined. The Board may defer payment of a claim in order to await completion of investigations of related claims, or for payment in subsequent fiscal years. The claimant and the lawyer shall be notified in writing of the Board's determination.

(Amended effective July 1, 1995.)

3.16 Reconsideration

If a claim has been reduced or denied by the Board, a claimant may request reconsideration of the determination within 30 days by submitting a written request to the Board. A claimant may not seek reconsideration if the full claim is allowed but a lesser amount has been authorized for payment under Rule 3.14(b) or (c), or on the basis that the Board did not award interest under Rule 3.14(d).

(Amended effective July 1, 1995.)

3.17 Subrogation

A claim paid pursuant to these Rules shall be repaid to the Fund by the lawyer. The Board shall obtain a subrogation agreement from the claimant. The Board may bring an action against the lawyer, the lawyer's assets, the lawyer's estate, the lawyer's law firm or partner(s) or any other person(s) or entities against which subrogation rights may be enforced, or may file liens against the property of the lawyer in the name of the Fund, in an amount equal to the sum paid the claimant plus the Board's attorney fees and costs. The claimant shall be notified of any action and may join in the action to press a claim for the loss in excess of the amount paid by the Fund, but the Fund shall have first priority to any recovery in the suit.

(Amended effective July 1, 1995.)

3.18 Notification of Claim Paid

a. The Board shall advise the Office of Lawyers Professional Responsibility of any claim paid, the amount paid, and the name of the lawyer.

b. Upon request of the lawyer, the Board may advise a lawyer admission or discipline authority of another jurisdiction the status of any file on the lawyer.

(Amended effective July 1, 1995.)

3.19 [Deleted effective July 1, 1995.]

Rule 4. Rule Governing Education

4.01 Education

The Board or the Director shall conduct research, analyze statistics, and categorize claims to determine whether there are methods and programs that would minimize lawyer misconduct resulting in claims against the Fund. The Board shall make recommendations to the Court of any such programs.

(Amended effective July 1, 1995.)

Code of Professional Responsibility for Interpreters in the Minnesota State Court System

Adopted effective January 1, 1996

Preamble

Applicability

TABLE OF CANONS

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PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency, or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier. As officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

(Added effective January 1, 1996.)

APPLICABILITY

This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise, use, or deliver interpreting services within the Minnesota state court system.

(Added effective January 1, 1996.)

Commentary

The use of the term "shall", is reserved for the black letter principles. Statements in the commentary use the term "should" to describe behavior that illustrates or elaborates upon the

principles. The commentaries are intended to convey what the drafters of this code believe to be probable and expected behaviors. Wherever a court policy or routine practice appears to conflict with the commentary in this code, it is recommended that the reasons for the policy or practice as it applies to court interpreters be reviewed for possible modification.

TEXT OF CANONS

Canon 1. Accuracy and Completeness

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to the meaning of what is stated or written, and without explanation.

(Added effective January 1, 1996.)

Commentary

The interpreter has a twofold duty:

1) to ensure that the proceedings reflect in English precisely what was said by a non-English speaking person, and

2) to place the non-English speaking person on an equal footing with those who understand English.

This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore interpreters are obligated to apply their best skills and judgment to faithfully preserve the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word" or literal oral interpretations are not appropriate when they distort the meaning of what was said in the source language, but every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted. This includes apparent misstatements.

Interpreters should never interject any statement or elaboration of their own. If the need arises to explain an interpreting problem (e.g. a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Spoken language interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures. Sign language interpreters, however, must employ all of the visual cues that the language they are interpreting for requires -- including facial expressions and body language, in addition to hand gestures. Judges, therefore, should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct. Any challenge to the interpreter's conduct should be directed to the judge.

The obligation to preserve accuracy includes the interpreter's duty to correct any errors of interpretation discovered by the interpreter during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

The ethical responsibility to accurately and completely interpret includes the responsibility of being properly prepared for interpreting assignments. Interpreters are encouraged to obtain documents and other information necessary to familiarize themselves with the nature and purpose of a proceeding. Prior preparation is especially required when testimony or documents include highly specialized terminology and subject matter.

Canon 2. Representation of Qualifications

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

(Added effective January 1, 1996.)

Commentary

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, certification and experience prior to appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

Canon 3. Impartiality and Avoidance of Conflict of Interest

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

(Added effective January 1, 1996.)

Commentary

The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties.

The interpreter of record should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with their clients, and should not take an active part in any of the proceedings. The interpreter should discourage a non-English speaking party's personal dependence.

During the course of the proceedings, interpreters of record should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. Official functions may include an informal preappearance assessment to include the following:

1. culturally appropriate introductions;

2. a determination of variety, mode, or level of communication;

3. a determination of potential conflicts of interest; and

4. a description of the interpreter's role and function.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest and must be disclosed to the judge. The interpreter should only divulge necessary information when disclosing the conflict of interest. The following are circumstances that create potential conflicts of interest that must be disclosed:

1. the interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;

2. the interpreter or the interpreter's friend, associate, or relative has a financial interest in the subject matter in controversy, a financial interest in a party to the proceeding, or any other interest that would be affected by the outcome of the case;

3. the interpreter has served in an investigative capacity for any party involved in the case at issue;

4. the interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;

5. the interpreter has been involved in the choice of counsel or law firm for that case at issue;

6. the interpreter is an attorney in the case at issue;

7. the interpreter has previously been retained for private employment by one of the parties to interpret in the case at issue; or

8. for any other reason, the interpreter's independence of judgment would be compromised in the course of providing services.

The existence of any one of the above-mentioned circumstances does not alone disqualify an interpreter from providing services as long as the interpreter is able to render services objectively. An interpreter may serve if the judge and all parties consent. If an actual or apparent conflict of interest exists the interpreter may, without explanation to any of the parties or the judge, decline to provide services.

Should an interpreter become aware that a non-English speaking participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the judge.

Canon 4. Professional Demeanor

Interpreters shall conduct themselves in a manner consistent with the dignity of the court.

(Added effective January 1, 1996.)

Commentary

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enables them to be heard and understood throughout the courtroom. If an interpreter is not actively interpreting, the interpreter should not engage in any distracting activity in the courtroom such as reading newspapers or magazines or engaging in conduct that may call inappropriate attention to the interpreter. Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court.

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings, but should be appropriately positioned to facilitate communication. Interpreters who use sign language or other visual modes of communication must, however, be positioned so that signs, facial expressions, and whole body movements, are visible to the person for whom they are interpreting.

Interpreters are encouraged to avoid personal or professional conduct which could discredit the court.

Canon 5. Confidentiality

Interpreters shall protect the confidentiality of all privileged and other confidential information.

(Added effective January 1, 1996.)

Commentary

Interpreters must protect and uphold the confidentiality of all privileged information obtained during the course of their duties. It is especially important that the interpreter understand and uphold the attorney-client privilege that requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that indicates probable imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to the presiding judge. If the judge is not available, the interpreter should disclose the information to an appropriate authority in the judiciary.

Canon 6. Restriction of Public Comment

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential, except to facilitate training and education.

(Added effective January 1, 1996.)

Commentary

Generally, interpreters should not discuss outside of the interpreter's official duties, interpreter assignments, persons involved or the facts of the case. However, interpreters may share information for training and educational purposes. Interpreters should only share as much information as is required to accomplish their purpose. An interpreter must not reveal privileged or confidential information.

Canon 7. Scope of Practice

Interpreters shall limit themselves to interpreting or translating and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

(Added effective January 1, 1996.)

Commentary

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only, including official functions as described in the commentary to Canon 3. Interpreters, however, may be required to initiate communications during a proceeding when they find it necessary to seek direction from the court in performing their duties. Examples of such circumstances include seeking direction from the court when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own interpreting errors, or

notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose or contents of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form, but should not explain the form or its purpose for such a person.

While engaged in the function of interpreting, interpreters should not personally perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation counselors.

Canon 8. Assessing and Reporting Impediments to Performance

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

(Added effective January 1, 1996.)

Commentary

If the communication mode or language variety of the non-English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority, which includes a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately e.g., the court room is not quiet enough for the interpreter to hear or be heard by the non-English speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret. Sign language interpreters must ensure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movement, as well as hand gestures.

Interpreters should notify the judge of the need to take periodic breaks in order to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy competently those assignments.

Even competent and experienced interpreters may encounter situations where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter, e.g., the unscheduled testimony of an expert witness. When such situations occur, interpreters should request a brief recess in order to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the judge.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should notify the judge if they

feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Canon 9. Duty to Report Ethical Violations

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and translating.

(Added effective January 1, 1996.)

Commentary

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, rules, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to explain their professional obligations to the user. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

Canon 10. Professional Development

Interpreters shall continually strive to improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues, and specialists in related fields.

(Added effective January 1, 1996.)

Commentary

Interpreters must continually strive to improve their interpreting skills and increase their knowledge of the languages they work in professionally, including past and current trends in technical terminology and social and regional dialects as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of court and policies of the judiciary that govern the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

Code of Judicial Conduct

Adopted effective July 1, 2009

With amendments effective through July 1, 2016

Preamble

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PREAMBLE

An independent, fair, and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

SCOPE

The Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. The contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

The Rules of the Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rule(s), and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

"Aggregate," in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate's campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate's opponent. See Rule 4.4.

"Appropriate authority" means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.

"Contribution" means money, a negotiable instrument, or a donation in kind that is given to a political committee, political fund, principal campaign committee, or party unit as defined in Minnesota Statutes, section 10A.01. "Contribution" includes a loan or advance of credit to a political committee, political fund, principal campaign committee, or party unit, if the loan or advance of credit is: (1) forgiven; or (2) repaid by an individual or an association other than the political committee, political fund, principal campaign committee, or party unit to which the loan or advance of credit was made. If an advance of credit or a loan is forgiven or repaid as provided in this paragraph, it is a contribution in the year in which the loan or advance of credit was made. "Contribution" does not include services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, political fund, principal campaign committee, or party unit, or the publishing or broadcasting of news items or editorial comments by the news media. See Rules 4.1 and 4.4.

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rule 2.11.

"Economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, parent, child, a person with whom the judge has an intimate relationship, or a member of the judge's household serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution, or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

See Rules 1.3 and 2.11.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

"Impartial," "impartiality," and **"impartially"** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in

considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

"Impending matter" is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

"Impropriety" includes conduct that violates the law, court rules, or provisions of the Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

"Independence" means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12,3.13, and 4.2.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.

"Intimate relationship" means a continuing relationship involving sexual relations as defined in Rule 1.8(j)(1) of the Rules of Professional Conduct.

"Judicial candidate" means any person, including a sitting judge, who is seeking selection for 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, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.

"Knowingly," "knowledge," "known," and **"knows"** mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, 2.15, 2.16, 3.6, and 4.1.

"Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 4.1, 4.2, 4.4, and 4.5.

"Leader in a political organization" is one who holds an elective, representative, or appointed position in a political organization. See Rule 4.1.

"Member of the candidate's family" means a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship. See Rules 4.1 and 4.2.

"Member of the judge's family" means a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, 3.11, 4.1, and 4.2.

"Member of a judge's family residing in the judge's household" means 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 Rule 2.11.

"Nonpublic information" means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

"Personally solicit" means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rules 4.1, 4.2, and 4.4.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate's campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.

"Public election" includes primary and general elections. See Rules 4.2 and 4.4.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

APPLICATION

The Application section establishes when the various Rules apply to a judge or judicial candidate.

I. Applicability of This Code

(A) The provisions of the Code apply to all full-time judges. Parts II through V of this section identify those provisions that apply to four distinct categories of part-time judges. 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. Canon 4 applies to judicial candidates.

(B) A judge, within the meaning of this Code, is anyone who is employed by the judicial branch of state government to perform judicial functions, including an officer such as a magistrate under Minnesota Statutes, section 484.702, court commissioner under Minnesota Statutes, section 489.01, referee, or judicial officer under Minnesota Statutes, section 487.08.

Comment

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions. By statute the legislature has applied the Code of Judicial Conduct to judges of the Tax Court (Minnesota Statutes, section 271.01, subdivision 1), the Worker's compensation Court of Appeals (Minnesota Statutes, section 175A.01, subdivision 4), and the Office of Administrative Hearings (Minnesota Statutes, section 14.48, subdivisions 2 and 3, paragraph (d)).

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.

[3] In recent years many jurisdictions have created what are often called "problem-solving" courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When court rules specifically authorize conduct not otherwise permitted under these Rules, they take precedence over the provisions set forth in the Code. Nevertheless, judges serving on "problem-solving" courts shall comply with this Code except to the extent court rules provide and permit otherwise.

II. Retired Judge Subject to Recall

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

(A) with Rule 3.9 (Service as Arbitrator or Mediator), except while serving as a judge; or

(B) at any time with Rule 3.8 (Appointments to Fiduciary Positions).

Comment

[1] For the purposes of this section, as long as a retired judge is subject to being recalled for service, the judge is considered to "perform judicial functions."

III. Continuing Part-Time Judge

A judge who serves repeatedly on a part-time basis under a continuing appointment,

(A) is not required to comply:

(1) with Rules 2.10(A) and 2.10(B) (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or

(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), 4.4 (Campaign Committees), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and

(B) shall not practice law in the district court of the county in which the judge serves, or, if the court is divided into divisions, in the division of the court on which the judge serves, or in any court subject to the appellate jurisdiction of the court on which the judge serves. This paragraph shall not apply to lawyers who are appointed pursuant to Minnesota Statutes, sections 484.013 and 491A.03, subdivision 1, or such other appointments as ordered by the Supreme Court. However, in no event shall the judge act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(Amended effective January 1, 2011.)

Comment

[1] 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 informed consent of all parties, and pursuant to Rule 1.12 of the Rules of Professional Conduct.

IV. Periodic Part-Time Judge

A periodic part-time 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,

(A) is not required to comply:

(1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or

(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and

(B) shall not practice law in the district court of the county in which the judge serves, or, if the court is divided into divisions, in the division of the court on which the judge serves, or in any court subject to the appellate jurisdiction of the court on which the judge serves. This paragraph shall not apply to lawyers who are appointed pursuant to Minnesota Statutes, sections 484.013 and 491A.03, subdivision 1, or such other appointments as ordered by the Supreme Court. However, in no event shall the judge act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(Amended effective January 1, 2011.)

V. Pro Tempore Part-Time Judge

A pro tempore part-time 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 is not required to comply:

(A) except while serving as a judge, with Rules 1.2 (Promoting Confidence in the Judiciary), 2.4 (External Influences on Judicial Conduct), 2.10 (Judicial Statements on Pending and Impending Cases), or 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); or

(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office).

VI. Time for Compliance

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

Comment

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries 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 Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

TEXT OF CANONS

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

Rule 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Comment

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Rule 1.3 Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Comment

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials.

Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Rule 2.1 Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

Comment

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

Rule 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

Rule 2.3 Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, against parties, witnesses, lawyers, or others based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

Rule 2.4 External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Comment

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public,

the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Rule 2.5 Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

Comment

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] 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 take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Rule 2.6 Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

Comment

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite

a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

Rule 2.7 Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

Comment

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues requires that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

Rule 2.8 Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

Comment

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] 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.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

Rule 2.9 Ex Parte Communications

A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the communication should be noted as received and returned to the sender without review by the judge. If a judge inadvertently reviews an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to notify the parties promptly of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

Comment

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, 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.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

Rule 2.10 Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with 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 judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Comment

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

Rule 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse, a person with whom the judge has an intimate relationship, a member of the judge's household, or a person within the third degree of relationship to any of them, or the spouse or person in an intimate relationship with such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee or a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent, child, or any other member of the judge's family residing in the judge's household, a person with whom the judge has an intimate relationship, or any other member of the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) 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, a person with whom the judge has an intimate relationship, and any member of the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Comment

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] 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 matters that require immediate action, the judge must disclose

on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] 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 itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, parent, child, a member of the judge's household, or a person with whom the judge has an intimate relationship serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

Rule 2.12 Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Comment

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

Rule 2.13 Administrative Appointments

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Comment

[1] 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 paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of the judge, the judge's spouse, a person in an intimate relationship with the judge, a member of the judge's household, or the spouse or person in an intimate relationship with such person.

Rule 2.14 Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

Rule 2.15 Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives credible information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives credible information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

Comment

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives credible information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to credible information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include, but are not limited to, communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

Rule 2.16 Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

Comment

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

Rule 3.1 Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law or Judicial Branch policy.

Comment

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices unlawful discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

Rule 3.2 Appearances before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

Comment

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule

2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

Rule 3.3 Testifying as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Comment

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. 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.

Rule 3.4 Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

Comment

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

Rule 3.5 Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

Comment

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

Rule 3.6 Affiliation with Discriminatory Organizations

(A) A judge shall not knowingly hold membership in any organization that practices unlawful discrimination.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices unlawful discrimination. A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

Comment

[1] A judge's public manifestation of approval of unlawful discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices unlawful discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate unlawfully if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, sexual orientation, or other classification protected by law, persons who would otherwise be eligible for admission. Whether an organization practices unlawful discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in unlawful discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting funds and services for such an organization or entity, but only from members of the judge's family, from a person with whom the judge has an intimate relationship, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, if there are no dues or fees required for membership;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if (a) the event concerns the law, the legal system, or the administration of justice, (b) the judge does not encourage persons to buy tickets for or attend the event or to make a contribution except as provided in paragraph (A)(2) of this rule, and (c) participation does not reflect adversely on the judge's independence, integrity, or impartiality;

(5) making recommendations to an organization or entity of which the judge is a member or director concerning its fund-granting programs and activities; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged 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.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

Comment

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

Rule 3.8 Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, a person with whom the judge has an intimate relationship, or a member of the judge's household and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely 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.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

Comment

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Rule 3.9 Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law. A retired judge may act as mediator or arbitrator if:

(A) The judge does not act as an arbitrator or mediator during the period of any judicial assignment;

(B) The judge is disqualified from mediation and arbitration in matters in which the judge served as judge, and is disqualified as judge from matters in which the judge acted as mediator or arbitrator, unless all parties to the proceeding consent after consultation with their attorneys; and

(C) Acting as arbitrator or mediator does not reflect adversely on the judge's impartiality.

Comment

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

[2] A retired judge may act as a mediator or arbitrator under the conditions set forth in the rule.

Rule 3.10 Practice of Law

A judge shall not practice law. 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 person with whom the judge has an intimate relationship, or a member of the judge's household, but is prohibited from serving as the lawyer for any such person in any forum.

Comment

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interest. See Rule 1.3.

Rule 3.11 Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and members of the judge's family and of persons with whom the judge has an intimate relationship or who are members of the judge's household.

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family or by a person with whom the judge has an intimate relationship or who is a member of the judge's household; or

(2) a business entity primarily engaged in investment of the financial resources of the judge, members of the judge's family, or a person with whom the judge has an intimate relationship or who is a member of the judge's household.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

Comment

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves, for members of their families, and for those with whom they have intimate relationships or who are members of their households. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

Rule 3.12 Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Comment

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

Rule 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a person with whom the judge has an intimate relationship, or a member of the judge's household, but that incidentally benefit the judge;

(9) gifts incident to a public testimonial;

(10) an invitation to the judge and the judge's spouse, a person in an intimate relationship with the judge, a member of the judge's household, or a guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal, or civic activities permitted by this Code, if the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the judge; or

(11) any other gift, loan, bequest, benefit, or other thing of value with a value not exceeding $150, if the source is not a party or other person who, directly or indirectly, has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance in the same manner as the judge reports compensation under Rule 3.15:

(1) any other gift, loan, bequest, benefit, or other thing of value not described in paragraphs (B)(1)-(10) above with a value exceeding $150; and

(2) any other gift, loan, bequest, benefit, or other thing of value not described in paragraphs (B)(1)-(10) above, if the source is a party or other person who, directly or indirectly, has come before the judge or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

Comment

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (A) prohibits acceptance where expressly prohibited by law or where the judge's independence, integrity, or impartiality would be compromised by acceptance. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion of for preferred customers, base upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, a person in an intimate relationship with the judge, or a member of the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family, intimates, and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.1, 4.2, and 4.4.

Rule 3.14 Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, person with whom the judge has an intimate relationship, or guest.

Comment

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Rule 3.15 Reporting Requirements

(A) In addition to any other reporting required by law, a judge shall publicly report, in the manner and time directed by this Rule, the source and amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12; and

(2) gifts and other things of value for which reporting is required by Rule 3.13(C).

(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; and the description of any gift, loan, bequest, benefit, or other thing of value accepted.

(C) The public report required by paragraph (A) and filed as required by paragraph (D) shall be made annually.

(D) Reports made in compliance with this Rule shall be filed annually on or before the first day of May as public documents in the office of the State Court Administrator.

(E) Income from investments, including real or personal property, pension plans, deferred compensation plans, and other lawful sources where the judge does not render current or future service in exchange for the income is not extrajudicial compensation to the judge for purposes of the reporting required by this Rule.

(Amended effective December 31, 2013.)

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

Rule 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

(1) act as leader in a political organization;

(2) make speeches on behalf of a political organization;

(3) publicly endorse or, except for the judge or candidate's opponent, publicly oppose another candidate for public office;

(4)(a) solicit funds for a political organization or a candidate for public office, or (b) make a contribution to a candidate for public office;

(5) attend or purchase tickets for dinners or other events sponsored by a candidate for public office;

(6) personally solicit or accept campaign contributions other than as authorized by Rules 4.2 and 4.4;

(7) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;

(8) use court staff, facilities, or other court resources in a campaign for judicial office in a manner prohibited by state law or judicial branch personnel policies;

(9) knowingly, or with reckless disregard for the truth, make any false or misleading statement;

(10) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(11) in connection with 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 judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A), except as permitted by Rule 4.4.

Comment

General Considerations

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

Participation in Political Activities

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations. Examples of such leadership roles include precinct or block captains and delegates or alternates to political conventions. Such positions would be inconsistent with an independent and impartial judiciary.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3.

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their

families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).

Statements and Comments Made during a Campaign for Judicial Office

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(9) obligates candidates and their committees to refrain from knowingly making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(9), (A)(10), or (A)(11), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(10), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(10) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(11) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are

not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(11) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(11), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

Rule 4.2 Political and Campaign Activities of Judicial Candidates in Public Elections

(A) A judicial candidate in a public election shall:

(1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination;

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1; and

(5) take reasonable measures to ensure that the candidate will not obtain any information identifying those who contribute or refuse to contribute to the candidate's campaign.

(B) A candidate for elective judicial office may, unless prohibited by law:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, Web sites, or other campaign literature; and

(3)(a) make a general request for campaign contributions when speaking to an audience of 20 or more people;

(b) sign letters, for distribution by the candidate's campaign committee, soliciting campaign contributions, if the letters direct contributions to be sent to the address of the candidate's campaign committee and not that of the candidate; and

(c) personally solicit campaign contributions from members of the judge's family or from a person with whom the judge has an intimate relationship.

Comment

[1] Paragraph (B) permits judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1.

[2] Despite paragraph (B), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1, paragraphs (A)(4), (A)(9), and (A)(11).

[3] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

Rule 4.3 Activities of Candidates for Appointive Judicial Office

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek support for the appointment from organizations and from individuals to the extent requested, required, or permitted by the appointing authority or the nominating commission.

Comment

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(11).

Rule 4.4 Campaign Committees

(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.

(B) A judicial candidate subject to public election shall direct his or her campaign committee:

(1) to solicit and accept only campaign contributions in an amount allowed by law;

(2) to comply with all applicable statutory requirements for reporting, disclosure, and divestiture of campaign contributions; and

(3) not to disclose to the candidate the identity of campaign contributors nor to disclose to the candidate the identity of those who were solicited for contribution and refused such solicitation. The candidate may be advised of aggregate contribution information in a manner that does not reveal the source(s) of the contributions.

(Amended effective December 31, 2013.)

Comment

[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions except as provided by Rule 4.2(B)(3). See Rule 4.1(A)(6). This Rule recognizes that judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are appropriate and in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.

Rule 4.5 Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

Comment

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

[3] Minnesota Constitution, Article VI, Section 6 prohibits a judge from holding any office under the United States, except a commission in a reserve component of the military forces of the United States, or any other office of the State of Minnesota and provides that the judge's term of office shall terminate at the time the judge files as a candidate for an elective office of the United States or for a nonjudicial office of the State of Minnesota.

Rules of Board on Judicial Standards

Adopted Effective July 1, 1986
With amendments received through July 1, 2016

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TEXT OF RULES

Definitions:

"Board" means the Minnesota Board on Judicial Standards.

"Censure" is a formal public sanction by the Supreme Court based on a finding that the judge has committed serious misconduct.

"Complaint" is information in any form from any source received by the board that alleges or from which a reasonable inference can be drawn that a judge committed misconduct or has a disability.

"Deferred Disposition Agreement" is an agreement between the judge and the board for the judge to undergo treatment, participate in education programs, or take other corrective action, based upon misconduct or disability that can be addressed through treatment or a rehabilitation program.

"Disability" is a physical or mental condition of a judge that seriously interferes with the capacity of the judge to perform judicial duties, including, but not limited to, impairment due in whole or in part from habitual or excessive use of intoxicants, drugs, or controlled substances. A disability may be permanent or temporary.

"Evaluation" is a prompt, discreet, and limited inquiry by the executive secretary into the facts and circumstances of any complaint or information that alleges conduct listed in Rule 4(a).

"Formal Complaint" is a complaint upon which the board has determined to conduct a public hearing.

"Formal Statement of Disability Proceeding" is a statement that the board has determined to conduct a public hearing to determine the appropriate action with regard to a judge alleged to have a disability.

"Investigation" is a full inquiry, with the authorization of the board, into the facts and circumstances of any complaint or information that alleges conduct listed in Rule 4(a).

"Judge" is any judge, including a full-time, part-time, or senior judge, judicial officer, referee, magistrate, or other hearing officer employed in the judicial branch of the state of Minnesota, any judge of the Minnesota Tax Court, any judge of the Workers' Compensation Court of Appeals, and the Chief Administrative Law Judge.

"Letter of Caution" is a nondisciplinary letter that advises the judge regarding future conduct.

"Private Admonition" is a nonpublic sanction imposed by the board for misconduct of an isolated and non-serious nature.

"Public Reprimand" is a public sanction imposed by the board or hearing panel based on a finding that the judge has committed serious misconduct.

"Reasonable Cause" is a reasonable belief in the existence of facts warranting discipline or a finding of disability.

"Senior Judge" is a "Retired Judge Subject to Recall" within the meaning of Part II, Application, Minnesota Code of Judicial Conduct.

(Amended effective January 1, 1996; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 1. Organization of Board

(a) Appointment of Members. The Board on Judicial Standards shall consist of one judge of the Court of Appeals, three judges of district court, two lawyers who have practiced law in the state for at least ten years and four resident citizens of Minnesota who are not judges, retired judges or lawyers. All members shall be appointed by the governor with the advice and consent of the senate except that senate confirmation shall not be required for judicial members.

(b) Term of Office.

(1) The term of each member shall be four years with the term ending on the first Monday in January except as provided in Rule 1(b)(2)(i).

(2) No member shall serve more than two full four-year terms not to exceed eight years except as follows:

(i) members may continue to serve until their successors are appointed and qualified but in no case later than July 1 in a year in which a term expires unless reappointed;

(ii) if a member is appointed to fill an unexpired term that does not exceed two years, the member is eligible for appointment to two additional four-year terms.

(c) Vacancy.

(1) A vacancy on the board shall be deemed to occur:

(i) When a member retires from the board; or

(ii) When a judge who is a member of the board ceases to hold the judicial office held at the time of selection; or

(iii) When a lawyer who is a member of the board ceases to be in good standing to practice law in the courts of this state or is appointed or elected to a judicial office; or

(iv) When a public member becomes a lawyer; or

(v) When a member is no longer a resident citizen of Minnesota.

(2) Vacancies shall be filled by selection of a successor in the same manner as required for the selection of the predecessor in office. A member selected to fill a vacancy shall hold office for the unexpired term of the predecessor. All vacancies on the board shall be filled within 90 days after the vacancy occurs.

(3) Members of the board may retire therefrom by submitting their resignation to the board, which shall certify the vacancy to the governor.

(d) Appointment and Performance Review of Executive Secretary. The executive secretary, who shall be an attorney licensed to practice law in Minnesota, with a minimum of fifteen years' experience in the practice of law, including any service as a judge, shall be appointed by and serve at the pleasure of the board. The board shall annually conduct a performance review of the executive secretary.

(e) Duties and Responsibilities of Executive Secretary. The executive secretary shall have duties and responsibilities prescribed by the board, including the authority to:

(1) Receive complaints and allegations as to misconduct or disability;

(2) Make preliminary evaluations;

(3) Conduct investigations of complaints as directed by the board;

(4) Recommend dispositions;

(5) Maintain the board's records;

(6) Maintain statistics concerning the operation of the board and make them available to the board and to the Supreme Court;

(7) Prepare the board's budget for approval by the board and administer its funds;

(8) Employ and supervise other members of the board's staff;

(9) Prepare an annual report of the board's activities for presentation to the board, to the Supreme Court and to the public;

(10) Employ, with the approval of the board, special counsel, private investigators or other experts as necessary to investigate and process matters before the board and before the Supreme Court. The use of the attorney general's staff prosecutors or law enforcement officers for this purpose is not allowed. The use of the director and staff of the Office of Lawyers Professional Responsibility for this purpose is allowed if the matter involves conduct of a judge, other than a Supreme Court Justice, that occurred prior to the judge assuming judicial office. Attorneys employed or providing assistance under this section shall be deemed to be counsel to the Board on Judicial Standards for the purposes of these rules; and

(11) Issue informal advisory opinions to judges as delegated by the board.

(f) Quorum and Chair.

(1) A quorum for the transaction of business by the board shall be a majority of the members of the board who are not recused.

(2) The board shall elect from its members a chair and vice-chair, each of whom shall serve a term of two years. The vice-chair shall act as chair in the absence of the chair.

(g) Meetings of the Board. Meetings of the board shall be held at the call of the chair, the vice-chair, the executive secretary, or the written request of three members of the board.

(h) Annual Report. At least once a year the board shall prepare a report summarizing its activities during the preceding year. One copy of this report shall be filed with the Supreme Court.

(i) Expenses of the Board and Staff.

(1) The expenses of the board shall be paid from appropriations of funds to the Board on Judicial Standards.

(2) Members of the board shall be compensated for their services as provided by law.

(3) In addition to the executive secretary, the board may appoint other employees to perform such duties as it shall direct, subject to the availability of funds under its budget.

(j) Board Policies. The board may adopt policies consistent with these Rules governing the conduct of its business and performance of its duties. The board shall maintain a Code of Ethics setting forth the ethical standards expected of board members in the performance of the board's responsibilities.

(k) Executive Committee. The board's executive committee shall consist of the chair, vice-chair, and a third member elected by the board. The executive committee shall include a judge, a

public member, and a lawyer. The executive committee shall act on behalf of the board between meetings within limits prescribed by the board. The executive committee shall not have the authority to determine that there is reasonable cause to believe a judge has committed misconduct.

(Amended effective January 1, 1996; amended effective March 30, 1999; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 2. Jurisdiction and Powers of Board

(a) Powers of the Board.

(1) Disposition of Complaints. The board shall have the power to receive complaints, investigate, make certain dispositions, and make recommendations to the Supreme Court concerning:

(i) Allegations of judicial misconduct;

(ii) Allegations of physical or mental disability of judges; and

(iii) Matters of voluntary retirement for disability.

(2) Advisory Opinions. The board, and as delegated by the board, the executive secretary, may issue advisory opinions on proper judicial conduct with respect to the provisions of the Code of Judicial Conduct. An advisory opinion may be requested by a judge or a candidate for judicial office.

(i) A request that the board issue an individual written advisory opinion shall relate to prospective conduct only, and shall be submitted in writing and contain a complete statement of all facts pertaining to the intended conduct and a clear, concise question of judicial ethics. The board shall issue a written opinion within 30 days after receipt of the written request, unless the time period is extended by the board.

(ii) The board may issue opinions of general applicability.

(iii) The executive secretary may provide informal opinions to judges.

(iv) The board and the Office of Lawyers Professional Responsibility may disclose to each other confidential information concerning opinion requests in order to promote consistency in their opinions.

(v) The fact that the judge or judicial candidate requested and relied on an advisory opinion shall be taken into account in any subsequent disciplinary proceedings. The advisory opinion shall not be binding on the hearing panel or the Supreme Court in the exercise of their judicial-discipline responsibilities.

(b) Jurisdiction Over Judges. The board shall have jurisdiction over allegations of misconduct and disability for all judges.

(c) Conduct Prior to Assuming Judicial Office. The board's jurisdiction shall include conduct that occurred prior to a judge assuming judicial office. The Office of Lawyers Professional Responsibility shall have jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office.

(d) Jurisdiction Over Former Judge. The board shall have jurisdiction over an inquiry, investigation, Formal Complaint, or Formal Statement of Disability Proceeding commenced before a judge left judicial office provided the conduct at issue occurred while the judge was in judicial office and the conduct at issue occurred in the judge's judicial capacity. The board may at any time

dismiss a matter involving a former judge if the board determines that pursuing the matter further is not a prudent use of the board's resources. The Office of Lawyers Professional Responsibility shall have jurisdiction over a lawyer who is no longer a judge to consider whether discipline is warranted with reference to allegedly unethical conduct that occurred during the time when the lawyer held judicial office. The board shall notify the Office of Lawyers Professional Responsibility if a judge leaves judicial office while an inquiry, investigation, Formal Complaint, or Formal Statement of Disability Proceeding is pending.

(e) Subpoenas and Depositions During Investigation.

(1) Subpoenas and Depositions Limited. Subpoenas and depositions during the board's investigation shall not be allowed, except as provided in this Rule. Subpoenas and depositions in panel proceedings are governed by Rules 7(b) and 9(b).

(2) Subpoenas for Investigation. During the investigative stage of a proceeding, prior to a finding of reasonable cause to proceed, the executive secretary may make application to the board to authorize the issuance of a subpoena compelling any person, including a judge, to attend and give testimony, and to produce documents, books, accounts and other records. The board may authorize the subpoena upon a finding that the information sought appears reasonably calculated to lead to the discovery of evidence of possible misconduct by a judge or the absence of such misconduct.

(3) Issuing Subpoenas. The District Court of Ramsey County shall issue subpoenas upon presentation of a resolution of the board.

(4) Motions. The District Court of Ramsey County shall have jurisdiction over motions arising from Rule 2(e) subpoenas and depositions. The judge shall be denominated by number or randomly selected initials in any District Court proceedings. Any resulting order of the District Court may not be appealed before entry of the hearing panel's disposition in accordance with Rule 11.

(f) Cooperation. A judge who is the subject of investigation or a disciplinary proceeding shall comply with the board's reasonable requests to furnish a full and complete explanation covering the matter under consideration and to appear for conferences. A judge who is the subject of disciplinary action under these rules shall comply with the terms and conditions of any order or disposition imposing discipline.

(g) Impeachment. Nothing in these rules shall affect the impeachment of judges under the Minnesota Constitution, Article 8.

(Amended effective January 1, 1996; amended effective March 30, 1999; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 3. Immunity; Privilege

Information submitted to the board or its staff and testimony given in the proceedings under these rules shall be absolutely privileged, and no civil action predicated thereon may be instituted against the complainant or witness, or their counsel. Members of the board, referees, board counsel, mentors appointed by the board, hearing panel members, a designee appointed by the Supreme Court under Rule 16(d)(4), and staff shall be absolutely immune from suit for all conduct in the course of their official duties.

(Amended effective January 1, 1996; amended effective July 1, 2016.)

Rule 4. Grounds for Discipline or Other Action

(a) Grounds for Discipline or Other Action Shall Include:

(1) Conviction of a crime punishable as a felony under state or federal law or any crime involving moral turpitude;

(2) A persistent failure to perform judicial duties;

(3) Pattern of incompetence in the performance of judicial duties;

(4) Habitual intemperance;

(5) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute, including, but not limited to, discrimination against or harassment of persons on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, disability or age;

(6) Conduct that constitutes a violation of the Code of Judicial Conduct or Rules of Professional Conduct;

(7) Disability.

(b) Criminal Conviction or Acquittal. A judge's criminal conviction in any American jurisdiction, even if upon a plea of nolo contendere or subject to appellate review, is, in proceedings under these Rules, conclusive evidence that the judge committed the conduct for which the judge was convicted. The same is true of a conviction in a foreign country if the facts and circumstances surrounding the conviction indicate that the judge was accorded fundamental fairness and due process. An acquittal or other disposition of any criminal charge filed against a judge shall not preclude action by the board with respect to the conduct upon which the charge was based.

(c) Proceedings Not Substitute for Appeal. The board shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as understood by the judge unless the judge acts contrary to clear and determined law and the error is egregious, made in bad faith, or made as part of a pattern or practice of legal error. Claims of error shall otherwise be left to the appellate process.

(Amended effective January 1, 1996; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 5. Confidentiality

(a) Before Formal Complaint and Response. Except as otherwise provided in this rule or Rule 16(f), all proceedings shall be confidential until the Formal Complaint or Formal Statement of Disability Proceeding and response, if any, have been filed with the Supreme Court pursuant to Rule 8. The board shall establish procedures for enforcing the confidentiality provided by this rule.

(1) If at any time the board issues a public reprimand, such action shall be a matter of public record.

(2) If the board issues a private admonition or a dismissal with a letter of caution or enters into a deferred disposition agreement, this action may be disclosed to the chief justice, chief judge and/or district administrator of the judicial district in which the judge sits. Such disclosure is at the discretion of the board and shall be for the purpose of monitoring future conduct of the judge and for assistance to the judge in modifying the judge's conduct. To the extent that any information is

disclosed by the board pursuant to this provision, the chief justice, chief judge and/or district administrator shall maintain the confidentiality of the information in accordance with Rule 5.

(3) Information may be disclosed between the Board on Judicial Standards or executive secretary and the Office of Lawyers Professional Responsibility in furtherance of their duties to investigate and consider conduct that occurred prior to a judge assuming judicial office.

(b) After Formal Complaint or Formal Statement of Disability Proceeding and Response. Upon the filing of the Formal Complaint or Formal Statement of Disability Proceeding and written response, if any, with the Supreme Court, except as provided in Rule 16(f) the proceedings become public, but the files of the board, other than the Formal Complaint or Formal Statement of Disability Proceeding and the written response thereto, shall remain confidential unless and until any documents, statements, depositions or other evidence in the files of the board are introduced or used in a public hearing as provided in Rule 10.

(c) Notice to Complainant. The board shall promptly notify the complainant, if any, of the board's action and give a brief explanation of the action. The notice shall disclose the names of the board members who did not participate in the action. If the board's action is issuance of a Formal Complaint or Formal Statement of Disability Proceeding, the board shall notify the complainant of the issuance of the Formal Complaint or Formal Statement of Disability Proceeding, the hearing panel's action, and the action, if any, of the Supreme Court.

(d) Work Product. The work product of the executive secretary and board counsel, and the records of the board's deliberations, shall not be disclosed.

(e) Public Statements by Board.

(1) In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the judge, the board may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without prejudgment and to state that the judge denies or admits the allegations. The statement shall be first submitted to the judge involved for comments and criticisms prior to its release, but the board in its discretion may release the statement as originally prepared.

(2) The board may disclose that a matter is not being investigated. If an inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, or if a complaint filed with the board has become publicly known, information concerning the lack of cause to proceed may be released by the board. If the inquiry was initiated after the statutory filing period for judicial office has opened, the board may issue a public statement as deemed appropriate pursuant to Rule 6(e).

(3) The board may make such disclosures as it deems appropriate whenever the board has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.

(f) Disclosure in Event of Application to the Governor for Retirement. The board may disclose to the governor information about the existence, status, and nature of pending complaints, complaints resulting in action of the board pursuant to Rule 6(f)(5), and complaints resulting in a private warning or imposition of conditions prior to August 1, 2009, regarding judges who have applied to the governor for disability retirement as provided in Rule 18.

(g) Disclosure for Judicial Selection, Appointment, Election, or Assignment. When any state or federal agency seeks material in connection with the selection or appointment of judges or

the assignment of a retired judge to judicial duties, the board may release information from its files only: (1) if the judge in question agrees to such dissemination; and (2) if the file reflects a pending complaint, action of the board pursuant to Rule 6(f)(5), or a private warning or imposition of conditions prior to August 1, 2009. If the board action was taken on or after January 1, 1996, such information may also be released if a judge is involved in a contested election, subject to the same restrictions.

(h) Disclosure to Judge. The judge who is the subject of a complaint shall, upon request, have access to the file relative to the complaint at any stage of the proceedings, including witness statements and notes of witness interviews. The following shall not be required to be disclosed: (1) communications between the executive secretary and board members and/or board counsel and communications between board members in furtherance of their duties and (2) the work product of the executive secretary, board members, and board counsel, including their notes, and the records of the board's and hearing panel's deliberations.

(i) Waiver of Confidentiality. A respondent judge may waive confidentiality at any time.

(j) Senior Judges. If the board receives credible information that a senior judge has engaged in conduct in violation of the Code of Judicial Conduct, the board may notify the chief justice, a chief judge, and the state court administrator.

(k) Mentors. If the board appoints a mentor for the judge, the board may disclose information to the mentor and may disclose information concerning the mentorship to the chief justice and a chief judge. If a mentor is appointed in connection with a judge's public discipline, the board may publicly disclose the identity of the mentor.

(Amended effective January 1, 1996; amended effective March 30, 1999; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 6. Screening and Investigation

(a) Initiation of Inquiry. An inquiry may be initiated as follows:

(1) An inquiry relating to conduct of a judge may be initiated upon a complaint.

(2) The board may on its own motion make an inquiry into the conduct of a judge.

(3) Upon request of the Chief Justice of the Supreme Court, the board shall make an inquiry into the conduct of a judge.

(4) An inquiry relating to the physical or mental condition of a judge may be initiated pursuant to Rule 16.

(b) Screening. The executive secretary shall review the complaint or information received by the board. If the complaint or information does not contain a basis for a reasonable belief that a judge may have engaged in misconduct or may have a disability, the executive secretary shall dismiss the complaint or end the inquiry, subject to review and approval by a board member as assigned by the chair, or, if appropriate, refer the matter to another agency or court.

(c) Evaluation. Upon a reasonable belief that a judge may have engaged in misconduct or may have a disability, the executive secretary shall conduct an evaluation. The results of all evaluations shall be routinely submitted to the board.

(d) Investigation; Notice.

(1) Upon review of the preliminary evaluation, or on its own motion, the board may, by resolution:

(i) stay proceedings pending action by another agency or court;

(ii) dismiss the complaint or end the inquiry; or

(iii) authorize an investigation.

(2) Within ten (10) business days after an investigation has been authorized by the board, the executive secretary shall give the following notice to the judge whose conduct is being investigated:

(i) a specific statement of the allegations and possible violations of the Code of Judicial Conduct being investigated, including notice that the investigation can be expanded if appropriate;

(ii) the judge's duty to respond under Rule 6(d)(5);

(iii) the judge's opportunity to appear before the board or panel of the board under Rule 6(d)(6); and

(iv) the name of the complainant or informant, unless the board determines there is good cause to withhold that information.

Except as provided in clause (3), the executive secretary shall not commence an investigation until such notice is sent to the judge.

(3) The board may defer notice for specific reasons, but when notice is deferred, the executive secretary shall give notice to the judge before making a recommendation as to discipline.

(4) Notice shall be sent immediately upon request of the judge whose conduct or physical or mental condition is the subject of the inquiry if the inquiry has been made public.

(5) Upon request of the executive secretary, the judge shall file a written response within thirty (30) days after service of the notice under Rule 6(d)(2).

(6) Before the board determines its disposition of the inquiry, either the board or the judge may request that the judge appear before the board or a panel of the board to respond to questions. The appearance shall be granted. If the board requests the judge's appearance, the executive secretary shall give the judge 20 days' notice. The board may require that the judge's testimony be sworn.

(e) Investigation of Complaints Filed During an Election. The board may expedite its investigation into a complaint against a judge who is a candidate for judicial office if the complaint was filed after the statutory filing period for judicial office has opened. If after investigation the board determines the complaint has no merit, the board may dismiss the complaint and issue an appropriate public statement under Rule 5(e)(2).

(f) Disposition After Investigation.

(1) Upon conclusion of an investigation or determination by another agency or court, the executive secretary may recommend disposition to the board.

(2) The board shall review the results of the investigation or determination by another agency or court and the recommendations of the executive secretary and determine whether there is reasonable cause to believe the judge committed misconduct.

(3) A finding of reasonable cause shall require the concurrence of a majority of the non-recused members of the board.

(4) Upon determination that there is not reasonable cause to believe the judge committed misconduct, the board shall dismiss the complaint or end the inquiry. Upon dismissal or termination of the inquiry, the board may issue a letter of caution that addresses the judge's conduct.

(5) If the board finds there is reasonable cause to believe the judge committed misconduct, it may:

(i) enter into a deferred disposition agreement for a period of time, and the agreement may specify the disposition upon completion;

(ii) if the misconduct appears to be of an isolated and non-serious nature, issue a private admonition, which may include conditions;

(iii) issue a public reprimand, which may include conditions; or

(iv) issue a Formal Complaint.

(6) Prior to issuance of a private admonition, the board shall serve the judge with a copy of the proposed private admonition and a notice stating that within 14 days after service of the proposed private admonition, the judge may serve the board with either a written demand for a private hearing in accordance with Rule 7 or the written comments and criticisms of the judge regarding the proposed admonition. If no timely demand for a hearing is made, the board may consider the comments and criticisms, if any, but may in its discretion issue the private admonition as originally prepared.

(7) Prior to issuance of a public reprimand, the board shall serve the judge with a copy of the proposed reprimand and a notice stating that within 14 days of service of the proposed reprimand, the judge may serve the board with either a written demand for a formal hearing as provided in Rule 8, or the written comments and criticisms of the judge regarding the proposed reprimand. If the judge makes a timely demand for a formal hearing, the board shall comply with Rule 8. If no timely demand for a hearing is made, the board may consider the comments and criticisms, if any, but may in its discretion issue the reprimand as originally prepared.

(8) After the board has determined to issue a Formal Complaint, the judge shall be given the opportunity to meet with a representative of the board, but the board is not required to delay filing the Formal Complaint.

(9) The board shall notify the judge of its action and shall disclose the names of the board members who did not participate in the action.

(g) Representation by Counsel. A judge may be represented by counsel, at the judge's expense, at any stage of the proceedings under these rules.

(h) Access to Transcripts and Recordings. Upon request by the board, the judge shall order and provide a transcript of the portions of hearings requested by the board. See Minnesota Statutes, section 486.06. Notwithstanding Rule 4, subdivision 3, of the Rules of Public Access to Records of the Judicial Branch, the board may also obtain audio recordings of court proceedings.

(Amended effective January 1, 1996; amended effective March 30, 1999; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 6Z. Procedure for Conduct Occurring Prior to Assumption of Judicial Office

(a) Complaint; Notice. If either the executive secretary or the Office of Lawyers Professional Responsibility initiates an inquiry or investigation, or receives a complaint, concerning the conduct of a judge occurring prior to assumption of judicial office, it shall so notify the other. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumes judicial office.

(b) Investigation. Complaints of a judge's unprofessional conduct occurring prior to the judge assuming judicial office shall be investigated by the Office of Lawyers Professional Responsibility and processed pursuant to the Rules on Lawyers Professional Responsibility. The Board on Judicial Standards may suspend a related inquiry pending the outcome of the investigation and/or proceedings.

(c) Authority of Board on Judicial Standards to Proceed Directly to Public Charges. If probable cause has been determined under Rule 9(j)(ii) of the Rules on Lawyers Professional Responsibility or proceedings before a referee or the Supreme Court have been commenced under those rules, the Board on Judicial Standards may, after finding reasonable cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a Formal Complaint under Rule 8 of those rules.

(d) Record of Lawyer Discipline Admissible in Judicial Disciplinary Proceeding. If there is a hearing under Rule 9 or Rule 14 of the Rules on Lawyers Professional Responsibility, the record of the hearing, including the transcript, and the findings and conclusions of the panel, referee, and/or the Supreme Court shall be admissible in any hearing convened under Rule 10 of the Rules of the Board on Judicial Standards. Counsel for the judge and the board may be permitted to introduce additional evidence, relevant to alleged violations of the Code of Judicial Conduct, at the hearing under Rule 10.

(Added effective March 30, 1999; amended effective July 1, 2009.)

Rule 7. Admonition Review Hearing.

(a) Hearing Panel. If a judge makes a timely demand for a private hearing as provided in Rule 6(f)(6), the board shall ask the Chief Justice of the Supreme Court to appoint a panel as provided in Rule 8(b). The judge shall be identified by number or randomly selected initials in the proceeding. The board shall notify the complainant, if any, of the judge's demand for a hearing.

(b) Panel Procedures. The procedures in Rule 9 and Rule 10(a) and (b) shall apply to an admonition review hearing except that the hearing shall be confidential and Rule 9(b) shall apply only to the extent permitted by this Rule. Depositions shall not be allowed, provided that the panel presider, for good cause shown, may authorize a subpoena and deposition of a witness living outside the state or physically unable to attend the hearing. The panel shall review the proposed admonition de novo.

(c) Form of Evidence at Admonition Review Hearing. The panel shall receive evidence only in the form of affidavits or other documents except for testimony by:

(1) The Judge;

(2) A witness whose testimony the review panel presider authorizes for good cause. If testimony is authorized, the presider may authorize the issuance of a subpoena under Rule 9(b).

(d) Disposition. The panel shall make written findings and conclusions. If the panel finds that any alleged violation is supported by clear and convincing evidence, the panel may affirm the admonition or, if the panel finds that the judge's misconduct warrants public discipline, the panel

may recommend that the board issue a public reprimand or a Formal Complaint. If the board does not accept a panel's recommendation to issue a public reprimand or a Formal Complaint, the admonition review by the panel shall become final. The panel shall dismiss the complaint if there is not clear and convincing evidence supporting the violation(s) alleged in the admonition.

(e) Review by Supreme Court. The judge may petition the Minnesota Supreme Court to review a panel's affirmance of an admonition by filing a petition with the clerk of the appellate courts in accordance with Rule 117, subdivision 3, of the Rules of Civil Appellate Procedure within 30 days of being served with the review panel's decision. The judge shall be identified by number or randomly selected initials in the proceeding. The board may respond in accordance with Rule 117, subdivision 4, of the Rules of Civil Appellate Procedure. If review is granted, the matter shall proceed under Rule 14 of these Rules.

(Added effective July 1, 2016.)

Rule 8. Formal Complaint or Formal Statement of Disability Proceeding and Notice

(a) Formal Complaint or Formal Statement of Disability Proceeding.

(1) The Formal Complaint or Formal Statement of Disability Proceeding shall set forth the charges against the judge, the factual allegations and the time within which these rules require the judge to serve a written response. Where more than one act of misconduct is alleged, each shall be clearly set forth.

(2) The judge shall be served promptly with a copy of the Formal Complaint or Formal Statement of Disability Proceeding. Service shall be accomplished by admission of service or certified mail, or in accordance with the Rules of Civil Procedure.

(3) The judge shall serve a written response on the board within 20 days after service of the Formal Complaint or Formal Statement of Disability Proceeding.

(4) The executive secretary shall file the Formal Complaint or Formal Statement of Disability Proceeding and the written response, if any, with the Supreme Court, within 30 days of service of the Formal Complaint or Formal Statement of Disability Proceeding unless the matter is resolved. The filing time may be extended by agreement of the board and the judge.

(b) Hearing Panel. The public hearing on the Formal Complaint or Formal Statement of Disability Proceeding shall be conducted before a three-member hearing panel. Members of the panel shall be appointed by the Chief Justice of the Supreme Court within 14 days of the filing of the Formal Complaint or Formal Statement of Disability Proceeding with the Supreme Court. The panel shall consist of one judge or retired judge in good standing, one lawyer, and one member of the public. Whenever possible, the public member shall be a former member of the board. The judge or retired judge member shall be the presider, and shall have the powers of a judge of the district court for these proceedings.

(c) Notice of Hearing.

(1) The hearing panel shall schedule a public hearing. The date shall be selected to afford the judge ample time to prepare for the hearing, but shall not be later than 90 days after the filing of the Formal Complaint or Formal Statement of Disability Proceeding with the Supreme Court. The judge and all counsel shall be notified of the time and place of the hearing.

(2) If the presider allows the amendment of the Formal Complaint or Formal Statement of Disability Proceeding, or in compelling circumstances, the hearing panel shall have the authority to extend the hearing date as it deems proper.

(d) Disclosure in Public Proceedings. Notwithstanding Rule 5, in a public reprimand, a Formal Complaint, and in proceedings before a panel under this rule or Rule 7, the board may disclose private discipline previously imposed on the judge.

(e) Failure to Answer/Failure to Appear. A judge's failure to answer the Formal Complaint or failure to attend the panel hearing, unless excused by the presider for good cause shown, shall constitute an admission of the factual allegations of the Formal Complaint.

(Amended effective January 1, 1996; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 9. Discovery

(a) Initial Disclosures. Within 20 days after the service of a response, counsel for the board and the judge shall exchange the names and addresses of all persons known to have knowledge of the relevant facts. The presider of the panel shall set a date for the exchange of the names and addresses of all witnesses the parties intend to call at the hearing.

(b) Subpoenas and Depositions. Subpoenas for inspection of documents, depositions, and the hearing may be issued only with the prior approval of the presider. Counsel for the board may take the deposition of the judge. The board and the judge may apply to the presider to take the deposition of witnesses who are unavailable to testify at the hearing. Depositions of other persons may be taken only if the presider finds that the party's need for the deposition outweighs the burdens placed on the deponent and on the other party and does not significantly delay the proceedings. The presider shall issue a protective order in accordance with Rule 26.03, Rules of Civil Procedure, when necessary to reduce the burdens on a deponent. Subpoenas shall be issued by the Ramsey County District Court upon presentation of the presider's authorization for the subpoena.

(c) Other Evidence. Counsel for the board and the judge shall exchange:

(1) non-privileged evidence relevant to the Formal Complaint, documents to be presented at the hearing, witness statements, and summaries of interviews with witnesses who will be called at the hearing; and

(2) other material only upon good cause shown to the presider.

This rule shall not limit the judge's access to the file under Rule 5(h). Upon request by the board or the judge and for good cause shown, the presider may authorize service of interrogatories and requests for production of documents and may direct the judge to sign authorizations for release of information.

(d) Exculpatory Evidence. Counsel for the board and the executive secretary shall provide the judge with exculpatory evidence relevant to the Formal Complaint.

(e) Duty of Supplementation. Both the board and the judge have a continuing duty to supplement information required to be exchanged under this rule.

(f) Completion of Discovery. All discovery shall be completed within 60 days of the service of the response or the expiration of the time for service of the response, whichever occurs first unless upon a showing of good cause, the presider extends the time.

(g) Failure to Disclose. The presider may preclude either party from calling a witness at the hearing if the party has not provided the opposing party with the witness' name and address, any statements taken from the witness or summaries of any interviews with the witness.

(h) Resolution of Disputes. Disputes concerning discovery, including subpoenas and depositions, shall be determined by the presider of the hearing panel before whom the matter is pending. The decisions of the presider may not be appealed before entry of the panel's disposition in the disciplinary proceeding.

(i) Civil Rules Not Applicable. Proceedings under these rules are not subject to the Rules of Civil Procedure regarding discovery except that Rules 26.03, 30.02-.07, 32.04-.05, and 37.04 are applicable to the extent that they are consistent with these rules.

(Amended effective January 1, 1996; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 10. Public Hearing

(a) Rules of Evidence. All testimony shall be under oath, and the Rules of Evidence shall apply except that affidavits and depositions are admissible in lieu of testimony.

(b) Presentation: Burden of Proof; Cross-Examination; Recording.

(1) An attorney or attorneys of the board's staff, or special counsel retained for the purpose, shall present the matter to the panel.

(2) The board has the burden of proving by clear and convincing evidence the facts justifying action.

(3) The judge shall be permitted to adduce evidence and produce and cross-examine witnesses, subject to the Rules of Evidence.

(4) Every formal hearing conducted under these rules shall be recorded verbatim.

(c) Amendments. By leave of the presider of the panel for good cause shown or by consent of the judge, the Formal Complaint or Formal Statement of Disability Proceeding may be amended after commencement of the hearing if the judge and the judge's counsel are given adequate time to prepare a response. Leave to amend shall be freely granted when justice so requires.

(Amended effective January 1, 1996; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 11. Findings, Disposition, and Appeal

(a) Findings. The hearing panel shall make findings of fact and conclusions of law as to whether there is clear and convincing evidence that the judge committed misconduct under the grounds for discipline in Rule 4. The panel shall file its findings and conclusions within 60 days after the case is submitted to the panel unless the Chief Justice, on request of the presider, extends the time for good cause shown. If the panel finds there is not clear and convincing evidence, the panel shall dismiss the case. If the panel finds there is clear and convincing evidence, the panel shall impose or recommend sanctions under Rule 11(b).

(b) Disposition. If the panel finds clear and convincing evidence of misconduct, the panel may:

(1) issue a public reprimand; or

(2) recommend any of the following sanctions to the Supreme Court:

(i) Removal;

(ii) Retirement;

(iii) Imposing discipline as an attorney;

(iv) Imposing limitations or conditions on the performance of judicial duties;

(v) Censure;

(vi) Imposing a civil penalty;

(vii) Suspension with or without pay; or

(viii) Any combination of the above sanctions.

(c) Filing and Service. The panel must file its findings of fact, conclusions of law, and disposition with the Supreme Court within 7 days after issuance of the disposition. The panel shall serve copies on the board and respondent judge. Proof of service shall also be filed with the Supreme Court.

(d) Appeal. The board or judge may appeal the disposition of the panel by filing a notice of appeal with the clerk of the appellate courts within 10 days after the panel serves the disposition on the parties. The appeal shall proceed under Rule 14. If the panel determines it is appropriate to issue a public reprimand, the reprimand shall be stayed until the time for appeal has run or any appeal is completed. If there is no appeal from a dismissal or reprimand, the disposition of the panel becomes final. A party's failure to timely appeal a panel's findings, conclusions, and/or recommendation for discipline constitutes acceptance thereof. A party seeking to challenge a finding of fact or conclusion by the panel shall order a transcript if a transcript has not already been prepared.

(Amended effective January 1, 1996; amended effective March 30, 1999; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 12. Costs

(a) Witness Fees.

(1) All witnesses shall receive fees and expenses to the same extent allowable in an ordinary civil action.

(2) Expenses of witnesses shall be borne by the party calling them, unless:

(i) Physical or mental disability of the judge is in issue, in which case the board shall reimburse the judge for the reasonable expenses of the witnesses whose testimony is related to the disability; or

(ii) The judge is exonerated of the charges, in which case the Supreme Court may determine that the imposition of costs and expert witness fees would work a financial hardship or injustice and shall then order that those fees be reimbursed.

(b) Transcript Cost. A transcript of all proceedings shall be provided to the judge without cost.

(c) Other Costs. All other costs of these proceedings shall be at public expense.

(Amended effective January 1, 1996.)

Rule 13. Disposition by Consent

(a) Agreement. At any time, the judge and the board may enter into an agreement in which the judge admits to any or all of the charges or allegations of disability in exchange for a stated

disposition or recommended disposition. Entry into the agreement shall stay the proceedings of a panel. The agreement shall set forth:

(1) a statement of the facts;

(2) the allegations to which the judge is admitting; and

(3) the agreed-upon disposition.

(b) Disposition. If the agreed-upon disposition is one the board is authorized to impose under Rule 6(f)(4) or (5), proceedings before the hearing panel shall terminate, and the board shall impose the disposition. If the agreed-upon disposition is one the board is not authorized to impose, the agreement shall be submitted to the Supreme Court. The Court shall enter an order implementing or rejecting the agreement. If the stated disposition is rejected by the Supreme Court, the agreement may be withdrawn but the facts admitted to in the agreement can be used against the judge in such further proceedings as the Court may direct.

(Added effective July 1, 2009; amended effective July 1, 2016.)

Rule 14. Supreme Court Review

(a) Prompt Consideration. Upon the filing of a recommendation for discipline or disability retirement, the Court shall promptly docket the matter for expedited consideration, but not sooner than the end of the time allowed for appeal of the panel's disposition by the board or judge.

(b) Briefs. Briefs shall be filed with the Court in accordance with Minn. R. Civ. App. P. 128 and 130-132 except as modified in this rule. Unless the Court otherwise orders,

(1) If one party has appealed, the appellant shall file a brief within 21 days after filing the notice of appeal, the respondent shall file a brief within 21 days after service of appellant's brief, and the appellant may file a reply within 10 days after service of respondent's brief.

(2) If both parties have appealed, the appellant shall file a brief within 21 days after filing the notice of appeal, the respondent/cross-appellant shall file a brief within 21 days after service of appellant's brief, the appellant shall file a response and reply brief within 14 days after service of respondent's brief, and the respondent may file a reply within 10 days after service of the appellant's response and reply brief.

(3) If neither party has appealed, the board shall, and the judge may, file a brief not exceeding seven pages within 14 days after the time to appeal has expired, and no reply briefs shall be filed; and

(4) A brief may be stapled rather than formally bound.

(c) Additional Findings and Filings; Supplemental Record.

(1) If the Court desires an expansion of the record or additional findings with respect either to the recommendation for discipline or to the sanction to be imposed, it shall remand the matter to the panel with appropriate directions, retaining jurisdiction, and shall stay proceedings pending receipt of the panel's filing of the additional record.

(2) The Court may order additional filings or oral argument as to specified issues or the entire matter.

(3) The Court without remand and prior to the imposition of discipline may accept or solicit supplementary filings with respect to medical or other information, provided that the parties have notice and an opportunity to be heard.

(d) Delay for Further Proceedings. The Court, on receipt of notice of an additional proceeding before the board involving the same judge, may stay proceedings pending the board's termination of this additional proceeding. In the event that additional recommendations for discipline of the judge are filed, the Court may impose a single sanction covering all recommendations.

(e) Decision. When the panel recommends the Supreme Court impose sanctions under Rule 11(b)(2), the Court shall review the record of the proceedings, giving deference to the panel's findings of fact, and shall file a written opinion and judgment directing such discipline or other action as it concludes is just and proper. If the judge or board has filed an appeal under Rule 11(d), the Court may accept the recommendation of the panel, or reject or modify it in whole or in part.

(f) Consideration of Lawyer Discipline. When the panel recommends the suspension or removal of a judge, the Court shall promptly notify the judge and the Office of Lawyers Professional Responsibility and give them an opportunity to be heard in the Court on the issue of lawyer discipline.

(g) Charge Against Supreme Court Justice. When any Formal Complaint or Formal Statement of Disability Proceeding has been filed against a member of the Supreme Court, the review under Rule 14 shall be submitted to and heard by a panel consisting of the Chief Judge of the Court of Appeals or designee and six others chosen at random from among the judges of the Court of Appeals by the Chief Judge or designee.

(h) Petition for Rehearing. In its decision, the Court may direct that no petition for rehearing will be entertained, in which event its decision shall be final upon filing. If the Court does not so direct, the respondent may file a petition for rehearing in accordance with the requirements of Minn. R. Civ. App. P. 140.

(Amended effective January 1, 1996; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 15. Interim Suspension

(a) Pending Criminal Prosecution. The Supreme Court may, without the necessity of board action, suspend a judge with pay upon the filing of an indictment or complaint charging the judge with a crime punishable as a felony under state or federal law. The Supreme Court may suspend the pay of such judge upon a conviction of a crime punishable as a felony under state or federal law or any other crime involving moral turpitude. If the conviction is reversed, suspension terminates and the judge shall be paid the salary for the period of suspension.

(b) Pending Final Decision. Interim suspension, with pay, pending final decision as to ultimate discipline, may be ordered by the Supreme Court in any proceeding under these rules.

(c) Review of Interim Suspension. Any judge suspended under section (b) of this rule shall be given a prompt hearing and determination by the Supreme Court upon application for review of the interim suspension order.

(Amended effective January 1, 1996; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 16. Special Provisions for Cases Involving Disability

(a) Proceedings in General. When it appears that a judge may have a disability as defined in these rules, the board shall follow the same procedures used with respect to misconduct, except as modified by this rule.

(b) Initiation of Inquiry. The board may initiate an inquiry into a case involving disability:

(1) upon receiving a complaint alleging conduct that may be due to a disability;

(2) when an investigation indicates the alleged conduct may be due to disability;

(3) when the judge asserts inability to defend in a disciplinary proceeding due to a disability;

(4) upon request of the Chief Justice of the Supreme Court; or

(5) upon the board's own motion.

(c) Evaluation. Upon initiation of an inquiry into a case involving disability, the executive secretary shall conduct an evaluation pursuant to Rule 6(c).

(d) Investigation; Notice; Medical Privilege.

(1) If upon review of the preliminary evaluation, or on its own motion, the board authorizes an investigation under Rule 6(d), the board shall given notice pursuant to Rule 6(d)(2) to the judge alleged to have a disability. The notice shall instruct the judge that when providing a written response under Rule 6(d)(5), the judge shall admit or deny the disability.

(2) The purpose of an investigation conducted under this rule is to determine whether there is reasonable cause to believe the judge has a disability.

(3) If the judge admits to a disability or provides affirmative evidence of a disability as a defense in a disciplinary proceeding, the admission or provision of evidence shall constitute reasonable cause to believe the judge has a disability and waiver of medical privilege as to records relevant to the alleged disability.

If the judge denies the disability, the board shall determine whether there is credible evidence of a disability. The board may consult with a qualified professional in the area of the alleged disability to determine whether the evidence before the board constitutes credible evidence. If there is credible evidence of a disability, the denial constitutes a waiver of medical privilege as to records relevant to the alleged disability. If there is not credible evidence of a disability, the judge does not waive medical privilege, and the board shall continue the investigation under Rule 6 as a disciplinary proceeding.

(4) If medical privilege is waived, the board may require the judge to provide medical records relevant to the alleged disability. Disputes concerning the relevancy of medical records shall be determined by the Supreme Court or its designee.

(5) If medical privilege is waived, the board may request that the judge consent to a physical or mental examination by a qualified medical practitioner designated by the board. The purpose of the examination is to assist the board in determining whether there is reasonable cause to believe the judge has a disability. The report of the medical practitioner shall be furnished to the board and the judge. If the judge fails or refuses to submit to a medical examination, the judge may not present as evidence the results of any medical examinations done on the judge's behalf, and the board may consider the judge's refusal or failure as evidence that the judge has a disability.

The judge has the right to an additional independent medical examination provided by experts other than those designated by the board, but the examination shall be at the sole expense of the judge, and written reports of any examination shall be provided to the board as soon as medically feasible.

(e) Disposition After Investigation.

(1) If the board determines there is not reasonable cause to believe the judge has a disability, the board shall determine whether a disciplinary disposition under Rule 6(f) is appropriate.

(2) If the board determines there is reasonable cause to believe the judge has a disability, the board may:

(i) enter into a deferred disposition agreement as provided in Rule 6(f)(5)(i); or

(ii) issue a Formal Statement of Disability Proceeding.

(f) Hearing. Upon issuance of a Formal Statement of Disability Proceeding, a hearing shall be held under Rules 10 and 11 to determine whether there is clear and convincing evidence the judge has a disability. If the board has also filed a Formal Complaint, the panel shall determine whether there is clear and convincing evidence that the judge committed misconduct and whether the misconduct was related to a disability. The panel may exclude the public from portions of the proceedings to hear evidence on psychological or medical materials or other evidence that would not be accessible to the public.

(1) If the panel finds clear and convincing evidence of a disability, the panel may:

(i) enter into a deferred disposition agreement as provided in Rule 11(b)(1); or

(ii) recommend any of the following actions to the Supreme Court:

(A) Removal;

(B) Disability retirement if the disability is or is likely to become permanent;

(C) Imposition of limitations or conditions on the performance of judicial duties;

(D) Suspension with or without pay; or

(E) Any combination of the above actions.

(2) The panel may also impose or recommend a disciplinary disposition with regard to misconduct, if applicable, pursuant to Rule 11(b).

(3) Any disposition of the panel is public.

(4) The board or judge may appeal the decision of the panel as provided in Rule 11(d).

(g) Petition for Reinstatement After Disability Suspension.

(1) A judge suspended by the Supreme Court due to disability may petition the board for reinstatement. Reinstatement may only be effected by order of the Supreme Court.

(2) The judge shall provide to the board the name of each qualified medical, psychological, or other expert, or qualified program or referral by whom or in which the judge has been examined or treated relevant to the disability since suspension. The judge shall furnish to the board written consent to the release of information and records from these sources.

(3) Upon the filing of a petition for reinstatement, the board may take or direct whatever action it deems necessary to determine whether the disability has been removed, including requesting the judge to consent to a physical or mental examination by a qualified professional in the area of the disability designated by the board.

(4) If the board determines, after conducting a review under paragraph (3), the judge has been restored to capacity to perform judicial duties, the board shall recommend to the Supreme Court that the judge be reinstated. If the board determines that the judge continues to have a disability, it shall notify the judge of its determination. The judge shall have 20 days after service of the notice to either accept the determination of the board or request a formal hearing on the petition. If the judge accepts the determination of the board, there will be no further proceedings on the petition. If the judge requests a formal hearing, proceedings will continue under Rule 16(f), but the petition shall replace the Formal Statement of Disability Proceeding.

(h) Representation by Counsel. If the judge in any proceeding under this rule is not represented by counsel, the board or, if a panel has been appointed, the presider shall appoint an attorney to represent the judge at public expense.

(Amended effective January 1, 1996; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 17. Involuntary Retirement

(a) Procedure. A judge who refuses to retire voluntarily may be involuntarily retired by the Supreme Court. If attempts to convince a judge to retire voluntarily fail, then the board shall proceed as provided in Rules 8, 9, 10, and 11. The Supreme Court shall then proceed as provided in Rule 14.

(b) Effect of Involuntary Retirement. A judge who is involuntarily retired shall be ineligible to perform judicial duties pending further order of the Supreme Court and may, upon order of the Supreme Court, be transferred to inactive status or indefinitely suspended from practicing law in the jurisdiction.

(Amended effective January 1, 1996; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 18. Application to the Governor for Disability Retirement

If a judge applies to the Governor for disability retirement, the Governor may make a written request that the board provide the Governor with information about the existence, status, and nature of any pending complaints or investigations relating to the judge. The board must promptly provide the information to the Governor. Upon receipt of a written waiver by the judge, the board may also provide the Governor with any of the board's documents related to the complaint, investigation, or the judge. The Governor may further disclose the information for the purpose of consulting with a qualified professional in the area of the alleged disability.

(Added effective July 1, 2009.)

Rule 19. Expungement

The executive secretary shall expunge records as follows:

(a) Dismissals. All records of a complaint where the board did not find reasonable cause to believe the judge committed misconduct or where the board did not find reasonable cause to believe the judge has a disability shall be destroyed four years after the board receives the complaint or

authorizes an investigation, whichever occurs first, except that an expungement shall be accomplished by the board's staff no later than two months after the time to expunge the file occurs.

(b) Case Files on Deceased Judges. All case files on deceased judges shall be destroyed, unless the file reflects a public proceeding concerning the judge, in which case the board may retain the key documents in the file.

(c) Exceptions. Upon application by the executive secretary to the chair for good cause shown and with notice and opportunity to be heard to the judge, records which would otherwise be expunged under this rule may be retained for such additional time as the chair may deem appropriate.

(Added effective January 1, 1996; amended effective July 1, 2009; amended effective July 1, 2016.)

Rule 20. Use of Allegations from Dismissed Inquiries

(a) Use of Allegations in General. Allegations from an inquiry that was dismissed shall not be referred to by the board in any subsequent proceedings or used for any purpose in any judicial or lawyer disciplinary proceeding against the judge, except as provided in this rule.

Allegations from a dismissed inquiry may be reinvestigated with permission of the board if, within four years after dismissal, additional information becomes known to the board regarding the inquiry.

(b) Use of Allegations From Dismissal with Letter of Caution. Allegations from an inquiry dismissed with a letter of caution may be used in subsequent proceedings only as follows:

(i) The fact that the inquiry was dismissed with a letter of caution may not be used to establish the misconduct alleged in a subsequent proceeding. However, the underlying conduct described in the letter of caution may be charged in a subsequent Formal Complaint within four years after dismissal, and evidence in support thereof may be presented to the hearing panel at the public hearing under Rule 10.

(ii) If the underlying conduct described in the letter of caution is charged in a subsequent Formal Complaint, and the panel finds the judge committed misconduct with respect to the facts underlying the dismissal with letter of caution, the letter of caution may be considered by the panel in determining an appropriate sanction.

(iii) A letter of caution may be used to show that a judge was on notice that the conduct described in the letter of caution could violate the Code of Judicial Conduct.

(Added effective July 1, 2009; amended effective July 1, 2016.)

Rule 21. Periodic Review

The Supreme Court may periodically appoint a committee to review the records and proceedings of the board for the purpose of evaluating the effectiveness of the disciplinary process. The records and proceedings reviewed by the committee shall be maintained as confidential except for records and proceedings that have already been made public. The final written and oral report of the committee may present information about the board as long as it contains no specific information that would easily identify a judge, witness, or complainant.

(Added effective July 1, 2009.)

Rule 22. Amendment of Rules

As procedural and other experience may require or suggest, the board may petition the Supreme Court for further rules of implementation or for necessary amendments to these rules.

(Renumbered effective January 1, 1996; amended effective July 1, 2009.)

Rule 23. Service and Computation of Time

Service on a party represented by counsel shall be made on the attorney. In computing any period of time prescribed or allowed by these rules or by order of court, the method of computation specified in Rules 6.01 and 6.05, Minnesota Rules of Civil Procedure, shall be used.

(Added effective July 1, 2016.)