

MONTANA RULES OF PROFESSIONAL CONDUCT

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. 03-264

IN RE: REVISING THE
MONTANA RULES OF
PROFESSIONAL CONDUCT

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) ORDER
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On April 25, 2003, the State Bar of Montana, together with its Ethics Committee, petitioned this Court to revise the Montana Rules of Professional Conduct. On May 20, 2003, we issued an order inviting the bench and bar and any interested persons to file written comments, suggestions or criticisms with the Clerk of this Court regarding the proposed revisions to the Montana Rules of Professional Conduct by September 1, 2003. We received all comments on that date.

The Court has considered each and every proposed revision and comment. We have accepted most, but not all, of the proposed revisions and have, after discussion, amended several of the proposed revisions. The attached Rules are the complete Montana Rules of Professional Conduct. Many existing Rules are not changed, others are changed subtly, some include entire new subsections and a few are entirely new. For ease of reading, no underlining or strikeouts are shown. In addition, we are deferring consideration of the proposed revisions to Rule 5.5 on the unauthorized practice of law and Rule 8.5 on disciplinary authority and choice of law until the comment period has run on the State Bar's petition for proposed revisions to the Rules which would—if adopted—establish multijurisdictional practice in Montana. Accordingly, the attached Rules 5.5 and 8.5 do not reflect any revisions.

THEREFORE, pursuant to the authority granted this Court by Article VII, Section 2(3) of the 1972 Montana Constitution, IT IS ORDERED that the Montana Rules of Professional Conduct attached to this order are ADOPTED.

IT IS FURTHER ORDERED that any existing Rules which are attached but were not revised remain in full force and effect. IT IS FURTHER ORDERED that Rules revised during this process are effective April 1, 2004.

IT IS FURTHER ORDERED that the Clerk of this Court shall prepare and mail copies of this Order with attached Montana Rules of Professional Conduct to: Robert J. Sullivan, President of the State Bar of Montana; Michael G. Alterowitz, Chair of the State Bar of Montana Ethics Commission; Chris Manos, Executive Director of the State Bar of Montana with the request that this Order be published in the next available issue of The Montana Lawyer and that this Order and the attached Montana Rules of Professional Conduct be posted to the State Bar's webpage; The State Law Librarian with a request that this Order and attached Montana Rules of Professional Conduct be posted to the State Law Library webpage; The State Reporter Publishing Company with the request that this Order and the attached Montana Rules of Professional Conduct be published in State Reporter; West Group with the request that this Order and the attached Montana Rules of Professional Conduct be published in the annual update of Montana Rules of Court; Gregory Petesch, Code Commissioner and Director of Legal Services for the Montana Legislative Services Division.

IT IS FURTHER ORDERED that the Clerk of this Court shall prepare and mail copies of this Order only to the Clerks of all of the District Courts of the State of Montana and to each District Court Judge with the request that each Clerk and each District Judge print their copy of the Montana Rules of Professional Conduct from the State Law Library webpage at: <http://www.lawlibrary.state.mt.us>

DATED this 17th day of February, 2004.

/S/ KARLA M. GRAY
/S/ JOHN WARNER
/S/ W. WILLIAM LEAPHART
/S/ JAMES C. NELSON
/S/ PATRICIA O'BRIEN COTTER
/S/ JAMES A. RICE

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. 09-0688

IN RE: THE RULES OF
PROFESSIONAL CONDUCT
ON ADVERTISING

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) ORDER
)

On November 30, 2009, the Trustees of the State Bar of Montana and the Ethics Committee (Petitioners) filed with this Court a Petition and Memorandum in Support of Revision of the Rules of Professional Conduct on Advertising.

The Petition alleges the proposed amendments would (1) clarify Montana disciplinary jurisdiction over attorney advertising; (2) specifically identify types of misleading lawyer communications; and (3) recognize that Montana does not have a procedure to "qualify" a lawyer referral service.

On January 8, 2010, this Court ordered members of the bench and bar of Montana and any other interested persons 90 days to file comments and/or suggestions to the Proposed Revision to the Rules of Professional Conduct on Advertising.

We have reviewed the Petition, Memorandum and all comments and/or suggestions received and conclude that the attached amendments to the Rules of Professional Conduct on Advertising should be adopted. Therefore, good cause appearing,

IT IS HEREBY ORDERED that Rules 7.1 (Communications Concerning a Lawyer's Services), 7.2 (Advertising), and (Jurisdiction and Certification) of the Rules of Professional Conduct on Advertising are hereby amended in accordance with the attached, and by this reference made a part hereof. The deleted language of the attached, amended Rules is stricken and the underlined language is added.

IT IS FURTHER ORDERED that these amendments shall be effective immediately.

IT IS FURTHER ORDERED that the Clerk of this Court shall give notice hereof to each District Court Judge; each Clerk of the District Court; the Executive Director of the State Bar of Montana, with a request that the State Bar publish a reference or link to this order on the State Bar's website and that notice of this order be published in the Montana Lawyer; to the Montana State Law Library, with a request that it publish a reference or link to this order on the Law Library's website.

DATED this 20th day of July, 2010.

/S/ MIKE MCGRATH
/S/ W. WILLIAM LEAPHART
/S/ PATRICIA O'BRIEN COTTER
/S/ MIKE WHEAT
/S/ JAMES A. RICE
/S/ JAMES C. NELSON

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. AF 09-0688

IN RE: CHANGES TO THE MONTANA RULES OF)
PROFESSIONAL CONDUCT to encourage) ORDER
limited scope representation (LSR) in Montana)

In September of 2010, the Montana Supreme Court Equal Justice Task Force, the Montana Supreme Court Commission on Self-Represented Litigants, and the State Bar Access to Justice Committee petitioned the Court to adopt rule changes in order to encourage limited scope representation (LSR) by Montana attorneys, as one means of addressing the unmet legal needs of low-to moderate-income Montanans. For that purpose, changes were proposed to the Montana Rules of Civil Procedure and the Montana Rules of Professional Conduct.

We invited and received written public comment on the proposed rule changes. At the end of the comment period, we also heard public comment at several public meetings. At our public meeting on March 1, 2011, we voted to adopt most, but not all, of the changes proposed to the Montana Rules of Professional Conduct and the Montana Rules of Civil Procedure.

IT IS NOW ORDERED:

Rules 1.2, 4.2, and 4.3 of the Montana Rules of Professional Conduct are amended by the addition of the language highlighted and underlined below:

Rule 1.2 -- Scope of Representation and Allocation of Authority Between Client and Lawyer

[existing subsections (a) and (b)]

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

(1) The client's informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or

(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:

(i) the representation is limited to the attorney and the services described in writing; and

(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.

[existing subsection (d)]

Rule 4.2 -- Communication with Person Represented by Counsel

(a) [existing rule]

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Rule 4.3 -- Dealing with Unrepresented Person

(a) [existing rule]

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

The above changes to the Montana Rules of Professional Conduct shall be effective on October 1, 2011.

This Order shall be published on the Montana Supreme Court website. The Clerk is directed to provide copies of this Order to the Montana State Law Library, the State Bar of Montana, Court Services Director Beth McLaughlin, Thomson-Reuters, Chair of the State Bar Ethics Committee Michael Alterowitz, and the Montana Legislative Services Division. The Clerk is further directed to provide copies of this Order to the Chairs of the Montana Supreme Court Equal Justice Task Force, the Montana Supreme Court Commission on Self-Represented Litigants, the State Bar of Montana Access to Justice Committee, and the Advisory Commission on Rules of Civil and Appellate Procedure.

PREAMBLE: A LAWYER'S RESPONSIBILITIES

(1) A lawyer shall always pursue the truth.

(2) 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.

(3) As a representative of clients, a lawyer performs various functions. In performance of any functions a lawyer shall behave consistently with the requirements of honest dealings with others. As advisor, a lawyer endeavors to provide a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer 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 under these Rules of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them.

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

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

(6) 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.

(7) 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.

(8) 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.

(9) A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are harmonious. A lawyer can be a dedicated advocate on behalf of a client, even an unpopular one, but in doing so must comply with these Rules of Professional Conduct. 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.

(10) In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest. 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 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.

(11) The legal profession is 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 in the courts.

(12) Self-regulation 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.

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

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

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

(k) “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.

(l) “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.

(m) “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.

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

(o) “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.

(p) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and e-mail. A “signed” writing includes the electronic equivalent of a signature, such as an electronic sound, symbol or process, which is attached to a writing and executed or adopted by a person with the intent to sign the writing.

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.

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

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

(b) 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 in writing.

(1) The client’s informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating

in a nonprofit court-annexed legal services program and the lawyer’s representation consists solely of providing information and advice or the preparation of court-approved legal forms; or

(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:

(i) the representation is limited to the attorney and the services described in writing; and

(ii) the attorney does not represent the client generally or in matters other than those identified in the writing..

(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.

RULE 1.3 - DILIGENCE

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

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(g), 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.

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 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 in writing. This paragraph does not apply in any matter in which it is reasonably foreseeable that total cost to a client, including attorney fees, will be \$500 or less.

(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 maintenance 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.

RULE 1.6 - CONFIDENTIALITY OF INFORMATION

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

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

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

(2) to secure legal advice about the lawyer's compliance with these Rules;

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(4) to comply with other law or a court order.

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.

RULE 1.8 - CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

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

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

(2) in matters in which a lawyer wishes to assert a retaining lien against client property, papers or materials in the lawyer's possession to secure payment for the lawyer's services and costs advanced relating to such property, papers or materials, a written agreement for such a lien shall expressly set forth the limitations contained in paragraph (i)(3);

(3) 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

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

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

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

(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;

(3) a lawyer may, for the sole purpose of providing basic living expenses, guarantee a loan from a regulated financial institution whose usual business involves making loans if such loan is 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 neither the lawyer nor anyone on his/her behalf offers, promises or advertises such financial

assistance before being retained by the client.

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

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

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

(h) A lawyer shall not:

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

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

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

(1) may acquire and assert a charging lien only against causes of action or counterclaims in litigation pursuant to and only to the extent specified in MCA 37-61-420(2); such a charging lien does not extend to other client property, papers or materials in the lawyer's possession, to any matter not in litigation, or to any matter otherwise not covered by the specific language of MCA 37-61-420(2);

(2) may contract with a client for a reasonable contingent fee in a civil case; and

(3) may not acquire or assert a retaining lien to secure payment due for the lawyer's services against any client property, papers or materials other than those related to the matter for which payment has not been made and, upon termination of representation, shall deliver to the client any client property, papers or materials reasonably necessary to protect the client's interest in the matter to which the property, papers or materials relate as provided in Rule 1.16(d).

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

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

RULE 1.9 - DUTIES TO FORMER CLIENTS

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

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

- (1) whose interests are materially adverse to that person; and
- (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter

or whose present or former firm has formerly represented a client in a matter shall not thereafter:

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

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

RULE 1.10 - IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

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

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

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the personally 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 any affected former client to enable it to ascertain compliance with the provisions of this Rule.

(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.

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

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

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

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

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

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

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

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a

authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

RULE 1.15 - SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in accordance with Rule 1.18 and this Rule. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

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

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

RULE 1.16 - DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

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

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

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

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and

property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. A lawyer is entitled to retain and is not obliged to deliver to a client or former client papers or materials personal to the lawyer or created or intended for internal use by the lawyer except as required by the limitations on the retaining lien in Rule 1.8(i). Except for those client papers which a lawyer may properly retain under the preceding sentence, a lawyer shall deliver either the originals or copies of papers or materials requested or required by a client or former client and bear the copying costs involved.

RULE 1.17 - GOVERNMENT EMPLOYMENT

An attorney employed full time by the State of Montana or a political subdivision shall not accept other employment during the course of which it would be possible to use or otherwise rely on information obtained by reason of government employment that is injurious, confidential or privileged and not otherwise discoverable.

RULE 1.18 - INTEREST ON LAWYER TRUST ACCOUNTS (IOLTA) PROGRAM

(a) Purpose. The purpose of the Interest on Lawyer Trust Accounts (IOLTA) program is to provide funds for the Montana Justice Foundation to pay the reasonable costs of administering the program and to make grants to entities with missions within the following general categories:

(1) Providing legal services, through both paid staff program(s) and pro bono program(s), to Montana's low income citizens who would otherwise be unable to obtain legal assistance;

(2) promoting a knowledge and awareness of the law; and

(3) improving the administration of justice.

(b) Required participation. IOLTA program participation is mandatory, except as provided in subsection (d), below. Every non-exempt lawyer admitted to practice in Montana, and/or every law firm composed of any such lawyers, which receives client funds, shall establish and maintain an interest-bearing trust account for pooled client funds, termed an "IOLTA Trust Account." Each lawyer/firm shall also establish separate interest-bearing trust accounts for individual clients, termed "Client Trust Accounts," when appropriate pursuant to this Rule.

(c) Administration.

(1) Deposits of clients' funds.

(A) All client funds paid to a lawyer/firm, including advances for costs and expenses, shall be deposited and maintained in one or more identifiable interest-bearing trust accounts (Trust Accounts) in the State of Montana. No funds belonging to the lawyer/firm shall be deposited into a Trust Account except:

(i) funds reasonably sufficient to pay account charges not offset by interest;

(ii) an amount to meet a minimum balance requirement for the waiver of service charges; and/or

(iii) funds belonging in part to a client and in part presently or potentially to the lawyer/firm, but the portion belonging to the lawyer/firm shall be withdrawn when due unless the right of the lawyer/firm to such funds is disputed by the client, in which event the disputed portion shall remain in the account until the dispute is resolved.

(B) The lawyer/firm shall comply with all Rules relating to preserving the identity of clients' funds and property.

(C) Every Trust Account shall be established with a federally-insured and state or federally regulated financial institution authorized by federal or state law to do business in Montana. Funds in each Trust Account shall be subject to immediate withdrawal.

(D) The interest rate payable on a Trust Account shall not be less than the rate paid to non-lawyer depositors. Higher rates offered for deposits meeting certain criteria, such as certificates

of deposit, may be obtained on Trust Account funds if immediate withdrawal is available.

(E) Every Trust Account shall bear the name of the lawyer/firm and be clearly designated as either an IOLTA Trust Account or a Client Trust Account established under this Rule.

(2) IOLTA Trust Accounts. Every IOLTA Trust Account shall comply with the following provisions:

(A) The lawyer/firm shall maintain all client funds that are either nominal in amount or to be held for a short period of time in an IOLTA Trust Account.

(B) No client may elect whether his/her funds should be deposited in an IOLTA Trust Account, receive interest or dividends earned on funds in an IOLTA Trust Account, or compel a lawyer/firm to invest funds that are nominal in amount or to be held for a short period of time in a Client Trust Account.

(C) The determination of whether a client's funds are nominal in amount or to be held for a short period of time rests solely in the sound judgment of each lawyer/firm. No charge of professional misconduct or ethical impropriety shall result from a lawyer's exercise of good faith judgment in that regard.

(D) To determine if a client's funds should be deposited in an IOLTA Trust Account, a lawyer/firm may be guided by considering:

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

(ii) the costs of establishing and administering the account, including the lawyer's/firm's fees, accounting fees and tax reporting requirements;

(iii) the amount of funds involved, the period of time they are expected to be held and the financial institution's minimum balance requirements and service charges;

(iv) the financial institution's ability to calculate and pay interest to individual clients; and

(v) the likelihood of delay in the relevant transaction or proceeding.

(E) The lawyer/firm shall require the financial institution in which the IOLTA Trust Account is established to:

(i) remit to the Montana Justice Foundation, at least quarterly, all interest or dividends on the average monthly balance in the IOLTA Trust Account, or as otherwise computed according to the institution's standard accounting practices, less reasonable service fees, if any;

(ii) with each remittance, provide the Montana Justice Foundation and the lawyer/firm with a statement showing for which lawyer/firm the remittance is sent, the period covered, the rate of interest applied, the total amount of interest earned, any service fees assessed against the account and the net amount of interest remitted;

(iii) charge no fees against an IOLTA Trust Account greater than fees charged to non-lawyer depositors for similar accounts, or which are otherwise unreasonable; and

(iv) collect no fees from the principal deposited in the IOLTA Trust Account.

(F) Annually the Montana Justice Foundation shall make available a list of all financial institutions offering IOLTA accounts and meeting this Rule's IOLTA depository qualifying requirements. Lawyers/firms shall be entitled to rely on the most recently published list for purposes of IOLTA Rule compliance. The Montana Justice Foundation shall pay all service charges incurred in operating an IOLTA Trust Account from IOLTA funds, to the extent the charges exceed those incurred in operating non-interest-bearing checking accounts at the same financial institution.

(G) Confidentiality. The Montana Justice Foundation shall protect the confidentiality of information regarding Trust Accounts pursuant to this Rule.

(3) Non-IOLTA client Trust Accounts. All client funds shall be deposited in an IOLTA Trust Account, unless they are deposited

in a separate interest-bearing account for a particular client's matter with the net interest paid to the client. Such interest must be held in trust as the property of the client as provided in this Rule for the principal funds of the client.

(d) A lawyer/firm is exempt from this Rule's requirements if:

(1) the nature of their practice is such that no client funds are ever received requiring a Trust Account;

(2) the lawyer practices law in another jurisdiction and not in Montana;

(3) the lawyer is a full-time judge, or government, military or inactive lawyer; or

(4) the Montana Justice Foundation's Board of Directors, on its own motion, exempts the lawyer/firm from participation in the program for a period of no more than two years when:

(A) service charges on the lawyer's/firm's Trust Account equal or exceed any interest generated; or

(B) no financial institution in the county where the lawyer/firm does business will accept IOLTA accounts.

(e) Lawyer filings and records.

(1) Filings. Each lawyer/firm shall file an annual certificate of compliance with or exemption from this Rule with the Montana Justice Foundation. The certification must include the name of the lawyer/firm listed on the account, the account number, and the financial institution name and address. The certification may be made in conjunction with the annual dues billing process. Failure to provide the certification may result in suspension from the practice of law in this state until the lawyer complies with the requirements of this Rule.

(2) Records. Lawyer trust accounts shall be maintained as prescribed by the Montana Supreme Court in the "Trust Account Maintenance and Audit Requirements" (adopted February 27, 1989).

(f) Implementation. Implementation will be effected through this Rule and the Rules of the State Bar of Montana, all as amended and approved by the Montana Supreme Court.

RULE 1.19 - SALE OF LAW PRACTICE

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

(a) The seller ceases to engage in the private practice of law in the geographic area in which the practice has been conducted.

(b) The entire practice is sold to one or more lawyers or law firms.

(c) Actual written notice is given to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the sale will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

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

RULE 1.20 - DUTIES TO PROSPECTIVE CLIENTS

(a) A person who consults with or has had consultations 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 had consultations with a prospective client shall not use or reveal information learned in the consultation(s), 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) Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or:

- (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 prospective client.

COUNSELOR

RULE 2.1 - ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

RULE 2.2 - EVALUATION FOR USE BY THIRD PERSONS

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

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

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

RULE 2.3 - LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, settlement master, 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 all parties that the lawyer is not representing them. 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.

ADVOCATE

RULE 3.1 - MERITORIOUS CLAIMS AND CONTENTIONS

(a) A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein:

- (1) without having first determined through diligent investigation that there is a bona fide basis in law and fact for the position to be advocated;
 - (2) for the purpose of harassment, delay, advancement of a nonmeritorious claim or solely to gain leverage; or
 - (3) to extend, modify or reverse existing law unless a bona fide basis in law and fact exists for advocating doing so.
- (b) A lawyer for the defendant in a criminal proceeding, or the

respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 3.2 - EXPEDITING LITIGATION

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

RULE 3.4 - FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence, unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

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

- (1) the person is a relative or an employee or other agent of a client; and
- (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

RULE 4.3 - DEALING WITH UNREPRESENTED PERSON

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

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

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 writing and knows or reasonably should know that the writing was inadvertently sent shall promptly notify the sender.

LAW FIRMS AND ASSOCIATIONS

RULE 5.1 - RESPONSIBILITIES OF PARTNERS, MANAGERS AND SUPERVISORY LAWYERS

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

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

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

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies or ignores 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.

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 the lawyer acts in accordance with the supervisory lawyer's reasonable resolution of an arguable question of professional duty.

RULE 5.3 - RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

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

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

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

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

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies or ignores 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.

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 1.19, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

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

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

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

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

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

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

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

RULE 5.5 - UNAUTHORIZED PRACTICE OF LAW

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

RULE 5.6 - RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

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

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

PUBLIC SERVICE

RULE 6.1 - PRO BONO PUBLICO SERVICE

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

(a) provide a substantial majority of the fifty (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 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.

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.

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 would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision 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.

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 benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

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

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

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

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 - COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false if it contains a material misrepresentation of fact or law. A misleading communication includes, but is not limited to those that:

(a) omits a fact as a result of which the statement considered as a whole is materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve;

(c) proclaims results obtained on behalf of clients, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts or settlements, without stating that past results afford no guarantee of future results and that every case is different and must be judged on its own merits;

(d) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(e) compares the quality of a lawyer's or a law firm's services with other lawyers' services, unless the comparison can be factually substantiated;

(f) advertises for a specific type of case concerning which the lawyer has neither experience nor competence;

(g) indicates an area of practice in which the lawyer routinely refers matters to other lawyers, without conspicuous identification of such fact;

(h) contains any paid testimonial about, or endorsement of, the lawyer without conspicuous identification of the fact that payments have been made for the testimonial or endorsement;

(i) contains any simulated portrayal of a lawyer, client, victim, scene, or event without conspicuous identification of the fact that it is a simulation;

(j) provides an office address for an office staffed only part time or by appointment only, without conspicuous identification of such fact;

(k) states that legal services are available on a contingent or no-recovery, no-fee basis without stating conspicuously that the client may be responsible for costs or expenses, if that is the case; or

(l) advertises for legal services without indentifying the jurisdictions in which the lawyer is licensed to practice.

RULE 7.2 - ADVERTISING

- (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.
- (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:
 - (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and
 - (3) pay for a law practice in accordance with Rule 1.19.
- (c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

RULE 7.3 - DIRECT CONTACT WITH PROSPECTIVE CLIENTS

- (a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:
 - (1) is a lawyer; or
 - (2) has a family, close personal, or prior professional relationship with the lawyer.
- (b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
 - (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer;
 - (2) the solicitation involves coercion, duress or harassment;
 - (3) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person cannot exercise reasonable judgment in employing a lawyer; or
 - (4) the lawyer reasonably should know that the person is already represented by another lawyer.
- (c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).
- (d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. Lawyers who participate in a legal services 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 SPECIALIZATION

- (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his/her practice is limited to or concentrated in a particular field of law, if such communication does not imply an unwarranted expertise in the field so as to be false or misleading under Rule 7.1.
- (b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.
- (c) A lawyer engaged in Admiralty practice may use the

designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
 - (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and
 - (2) the name of the certifying organization is clearly identified in the communication.

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 (e.g., website) 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.

MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 8.1 - BAR ADMISSION AND DISCIPLINARY MATTERS

- An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
 - (a) knowingly make a false statement of material fact; or
 - (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

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.

RULE 8.3 - REPORTING PROFESSIONAL MISCONDUCT

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) A lawyer who knows that a judge has committed a violation of applicable 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 otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

