

IN THE SUPREME COURT, STATE OF WYOMING

October Term, A.D. 2023

In the Matter of Amendments to the)
Rules of Professional)
Conduct for Attorneys at Law)

**ORDER AMENDING RULES OF PROFESSIONAL
CONDUCT FOR ATTORNEYS AT LAW**

The Board of Professional Responsibility of the Wyoming State Bar, by and through Bar Counsel for the Wyoming State Bar, has recommended the Wyoming Supreme Court amend the Rules of Professional Conduct for Attorneys at Law. This Court finds the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to the Rules of Professional Conduct for Attorneys at Law, attached hereto, be, and hereby are, adopted by the Court to be effective April 15, 2024; and it is further

ORDERED that this order and the attached amendments be published in the advance sheets of the Pacific Reporter; the attached amendments be published in the Wyoming Court Rules Volume; and this order and the attached amendments be published online at the Wyoming Judicial Branch's website, <http://www.courts.state.wy.us>. The amendments shall also be recorded in the journal of this Court.

DATED this 6th day of February, 2024.

BY THE COURT:

/s/

KATE M. FOX
Chief Justice

RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW

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

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.

~~[6]~~ [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.

Definitional Cross-References

"Reasonably" See Rule 1.0(i)

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

* * *

Definitional Cross-References

“Fraudulent” See Rule 1.0(e)

“Informed consent” See Rule 1.0(f)

“Knows” See Rule 1.0(g)

“Reasonable” See Rule 1.0(i)

Rule 1.3. Diligence.

* * *

Definitional Cross-References

“Reasonable” See Rule 1.0(i)

Rule 1.4. Communication.

* * *

Definitional Cross-References

“Informed consent” See Rule 1.0(f)

“Knows” See Rule 1.0(g)

“Reasonably” See Rule 1.0(i)

Rule 1.5. Fees.

* * *

~~(f) A lawyer shall not pay or receive a fee or commission solely for referring a case to another lawyer.~~

COMMENT

* * *

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. For procedural requirements governing fee disputes, see Wyoming Rules for Fee Arbitration.~~ In addition, 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.

Definitional Cross-References

“Confirmed in writing” See Rule 1.0(c)

“Firm” See Rule 1.0(d)

“Writing” and “Written” and “Signed” See Rule 1.0(o)

Rule 1.6. Confidentiality of Information.

* * *

COMMENT

* * *

Disclosure Adverse to Client.

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[6] [7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[7] [8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

~~[8]~~ [9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

~~[9]~~ [10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

~~[10]~~ [11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

~~[11]~~ [12] Other law may require that a lawyer disclose information about a client. For example, *see* Wyoming Statute Sections 14-3-205 and 35-20-103. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

~~[12]~~ [13] A lawyer appointed to act as a guardian ad litem represents the best interests of that individual, not the individual. As stated in paragraph (b)(8), the lawyer has professional discretion to reveal information in order to protect the individual's best interests. Any such disclosure should be no greater than that which the lawyer reasonably believes necessary to protect the individual's best interests.

Detection of Conflicts of Interest.

~~[13]~~ [14] Paragraph (b)(7) 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 [7]. 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 a 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 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.

~~[14]~~ [15] Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) 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.

~~[15]~~ [16] 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)(6) permits the lawyer to comply with the court's order.

~~[16]~~ [17] 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.

~~[17]~~ [18] 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)(8). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the

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

Acting Competently to Preserve Confidentiality.

~~[18]~~ [19] 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].

~~[19]~~ [20] 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.

[20] [21] 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.

Definitional Cross-References

“Firm” *See* Rule 1.0(d)

“Fraud” *See* Rule 1.0(e)

“Informed consent” *See* Rule 1.0(f)

“Reasonably” *See* Rule 1.0(i)

“Reasonably believes” *See* Rule 1.0(j)

“Substantial” *See* Rule 1.0(m)

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 a writing, ~~signed by the client.~~

COMMENT

* * *

[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 ~~the~~ each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. *See* Rule 1.10.

* * *

Consent Confirmed in a Writing Signed by the Client.

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing ~~must~~ 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(c). 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(c). 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. Similarly, although the Rule does not require that the writing be signed by the client, obtaining the client's signature is encouraged to further avoid disputes or ambiguities.

* * *

Definitional Cross-References

"Confirmed in writing" See Rule 1.0(c)

"Informed consent" See Rule 1.0(f)

"Reasonably believes" See Rule 1.0(j)

"Tribunal" See Rule 1.0(n)

Rule 1.8. Conflict of Interest: Current Clients: Specific Prohibited Transactions.

* * *

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

* * *

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

* * *

(3) a lawyer representing an indigent client pro bono, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may provide modest gifts to the client for food, rent, transportation, medicine and other basic living expenses. The lawyer:

- (i) may not promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;
- (ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and

(iii) may not publicize or advertise a willingness to provide such gifts to prospective clients.

Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee-shifting statute.

* * *

(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.

* * *

COMMENT

* * *

[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 client must give informed consent ~~in a writing signed by the client.~~ In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's informed consent approving the transaction.

* * *

[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 order for the client to make an informed decision whether to waive 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.

* * *

[11] Paragraph (e)(3) provides another exception. A lawyer representing an indigent client without fee, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may give the client modest gifts. Gifts permitted under paragraph (e)(3) include modest contributions for food, rent, transportation, medicine and similar basic necessities of life. If the gift may have consequences for the client, including, e.g., for receipt of government benefits, social services, or tax liability, the lawyer should consult with the client about these. See Rule 1.4.

[12] The paragraph (e)(3) exception is narrow. Modest gifts are allowed in specific circumstances where it is unlikely to create conflicts of interest or invite abuse. Paragraph (e)(3) prohibits the

lawyer from (i) promising, assuring or implying the availability of financial assistance prior to retention or as an inducement to continue the client-lawyer relationship after retention; (ii) seeking or accepting reimbursement from the client, a relative of the client or anyone affiliated with the client; and (iii) publicizing or advertising a willingness to provide gifts to prospective clients beyond court costs and expenses of litigation in connection with contemplated or pending litigation or administrative proceedings.

[13] Financial assistance, including modest gifts pursuant to paragraph (e)(3), may be provided even if the representation is eligible for fees under a fee-shifting statute. However, paragraph (e)(3) does not permit lawyers to provide assistance in other contemplated or pending litigation in which the lawyer may eventually recover a fee, such as contingent-fee personal injury cases or cases in which fees may be available under a contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.

Person Paying for a Lawyer's Services.

~~[11]~~ [14] 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 the client gives informed consent to permit the arrangement. 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]~~ [15] Sometimes, it will be sufficient for the client to give informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation if each affected client gives informed consent, unless the conflict is nonconsentable. Under Rule 1.7(b), the client's consent must be confirmed in writing.

Aggregate Settlements.

~~[13]~~ [16] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether

to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. *See also*, Rule 1.0(f) (definition of informed consent). While lawyers representing plaintiffs or defendants in a class action, or those proceeding derivatively, might not have a full client-lawyer relationship with each member of the class, 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]~~ [17] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

~~[15]~~ [18] 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]~~ [19] 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. *See also*, Rules Governing Contingent Fees for Members of the Wyoming State Bar.

Client-Lawyer Sexual Relationships.

~~[17]~~ [20] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a current client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

~~[18]~~ [21] 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, Comment [12].

~~[19]~~ [22] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

Imputation of Prohibitions.

~~[20]~~ [23] 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.

Definitional Cross-References

"Firm" *See* Rule 1.0(d)

“Informed consent” See Rule 1.0(f)
“Knowingly” See Rule 1.0(g)
“Substantial” See Rule 1.0(m)
“Writing” and “Signed” See Rule 1.0(o)

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. ~~For representation of another person in the same matter the former client's informed consent confirmed in writing shall be signed by the client.~~
- (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. ~~For representation of another person in the same matter the former client's informed consent confirmed in writing shall be signed by the client.~~

* * *

COMMENT

* * *

[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(c) and (f). Similarly, although the Rule does not require that the writing be signed by the client, obtaining the client's signature is encouraged to further avoid disputes or ambiguities. ~~For representation of another person in the same matter the former client's informed consent confirmed in writing shall be signed by the client.~~ 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.

Definitional Cross-References

“Confirmed in writing” See Rule 1.0(c)
“Firm” See Rule 1.0(d)
“Informed Consent” See Rule 1.0(f)
“Knowingly” and “Known” See Rule 1.0(g)
“Writing” See Rule 1.0(o)

Rule 1.10. Imputation of Conflicts of Interest: General Rule.

* * *

Definitional Cross-References

“Firm” See Rule 1.0(d)
“Knowingly” See Rule 1.0(g)
“Partner” See Rule 1.0(h)

“Screened” See Rule 1.0(l)

“Tribunal” See Rule 1.0(n)

“Written” See Rule 1.0(o)

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

* * *

Definitional Cross-References

“Confirmed in writing” See Rule 1.0(c)

“Firm” See Rule 1.0(d)

“Informed consent” See Rule 1.0(f)

“Knowingly” and “Knows” See Rule 1.0(g)

“Screened” See Rule 1.0(l)

“Written” See Rule 1.0(o)

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 a writing ~~signed by the client~~.

* * *

COMMENT

* * *

[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 a writing ~~signed by the client~~. See Rule 1.0(f) and (c). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

* * *

Definitional Cross-References

“Confirmed in writing” See Rule 1.0(c)

“Firm” See Rule 1.0(d)

“Informed consent” See Rule 1.0(f)

“Knowingly” See Rule 1.0(g)

“Screened” See Rule 1.0(l)

“Tribunal” See Rule 1.0(n)

“Writing” and “Written” See Rule 1.0(o)

Rule 1.13. Organization as Client.

* * *

Definitional Cross-References

“Knows” See Rule 1.0(g)

“Reasonably” See Rule 1.0(i)

“Reasonably believes” See Rule 1.0(j)

“Reasonably should know” See Rule 1.0(k)

“Substantial” See Rule 1.0(m)

Rule 1.14. Client with Diminished Capacity.

* * *

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.

* * *

[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).

* * *

[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.

* * *

Definitional Cross-References

“Reasonably” See Rule 1.0(i)

“Reasonably believes” See Rule 1.0(j)

“Substantial” See Rule 1.0(m)

* * *

Rule 1.16. Declining or Terminating Representation.

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. 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; or

(4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

* * *

COMMENT

[1] Paragraph (a) imposes an obligation on a lawyer to inquire into and assess the facts and circumstances of the representation before accepting it. The obligation imposed by Paragraph (a) continues throughout the representation. A change in the facts and circumstances relating to the representation may trigger a lawyer's need to make further inquiry and assessment. For example, a client traditionally uses a lawyer to acquire local real estate through the use of domestic limited liability companies, with financing from a local bank. The same client then asks the lawyer to create a multi-tier corporate structure, formed in another state to acquire property in a third jurisdiction, and requests to route the transaction's funding through the lawyer's trust account. Another example is when, during the course of a representation, a new party is named or a new entity becomes involved. 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. Under paragraph (a)(4), the lawyer's inquiry into and assessment of the facts and circumstances will be informed by the risk that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. This analysis means that the required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation. Factors to be considered in determining the level of risk may include: (i) the identity of the client, such as whether the client is a natural person or an entity and, if an entity, the beneficial owners of that entity, (ii) the lawyer's experience and familiarity with the client, (iii) the nature of the requested legal services, (iv) the relevant jurisdictions involved in the representation (for example, whether

a jurisdiction is considered at high risk for money laundering or terrorist financing), and (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held. For further guidance assessing risk, see, e.g., as amended or updated, Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals, the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, A Lawyer's Guide to Detecting and Preventing Money Laundering (a collaborative publication of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct, and the U.S. Department of Treasury Specially Designated Nationals and Blocked Persons List.

* * *

Definitional Cross-References

"Fraud" and "Fraudulent" See Rule 1.0(e)

"Reasonable" See Rule 1.0(i)

"Reasonably believes" See Rule 1.0(j)

"Tribunal" See Rule 1.0(n)

Rule 1.17. Sale of Law Practice.

* * *

Definitional Cross-References

"Law firm" See Rule 1.0(d)

"Written" See Rule 1.0(o)

Rule 1.18. Duties to Prospective Client.

* * *

(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 given informed consent, confirmed in a writing ~~signed by~~; or

* * *

COMMENT

* * *

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

* * *

Definitional Cross-References

“Confirmed in writing” See Rule 1.0(c)

“Firm” See Rule 1.0(d)

“Informed Consent” See Rule 1.0(f)

“Knowingly” See Rule 1.0(g)

“Reasonable” and “Reasonably” See Rule 1.0(i)

“Screened” See Rule 1.0(l)

“Written” See Rule 1.0(o)

* * *

Rule 2.3. Evaluation for Use by Third Persons.

* * *

Definitional Cross-References

“Informed consent” See Rule 1.0(f)

“Knows” See Rule 1.0(g)

“Reasonably believes” See Rule 1.0(j)

“Reasonably should know” See Rule 1.0(k)

Rule 2.4. Lawyer Serving as Third-Party Neutral.

* * *

Definitional Cross-References

“Knows” See Rule 1.0(g)

“Reasonably should know” See Rule 1.0(k)

* * *

Rule 3.2. Expediting Litigation.

* * *

Definitional Cross-References

“Reasonable” See Rule 1.0(i)

Rule 3.3. Candor Toward the Tribunal.

* * *

Definitional Cross-References

“Fraudulent” See Rule 1.0(e)

“Knowingly” and “Known” and “Knows” See Rule 1.0(g)

“Reasonable” See Rule 1.0(i)

“Reasonably believes” See Rule 1.0(j)

“Tribunal” See Rule 1.0(n)

Rule 3.4. Fairness to Opposing Party and Counsel.

* * *

Definitional Cross-References

“Knowingly” See Rule 1.0(g)

“Reasonably” See Rule 1.0(i)

“Reasonably believes” See Rule 1.0(j)

“Tribunal” See Rule 1.0(n)

Rule 3.5. Impartiality and Decorum of the Tribunal.

* * *

Definitional Cross-References

“Known” See Rule 1.0(g)

“Tribunal” See Rule 1.0(n)

Rule 3.6. Trial Publicity.

* * *

Definitional Cross-References

“Firm” See Rule 1.0(d)

“Knows” See Rule 1.0(g)

“Reasonable” See Rule 1.0(i)

“Reasonably should know” See Rule 1.0(k)

“Substantial” See Rule 1.0(m)

Rule 3.7. Lawyer as Witness.

* * *

COMMENT

* * *

Conflict of Interest.

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

Definitional Cross-References

“Firm” See Rule 1.0(d)

“Substantial” See Rule 1.0(m)

Rule 3.8. Special Responsibilities of Prosecutor.

* * *

Definitional Cross-References

“Known” and “Knows” See Rule 1.0(g)

“Reasonable” See Rule 1.0(i)

“Reasonably believes” See Rule 1.0(j)

“Substantial” See Rule 1.0(m)

“Tribunal” See Rule 1.0(n)

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others.

* * *

Definitional Cross-References

“Fraudulent” See Rule 1.0(e)

“Knowingly” See Rule 1.0(g)

Rule 4.2. Communication with Person Represented by Counsel.

* * *

Definitional Cross-References

“Knows” See Rule 1.0(g)

Rule 4.3. Dealing with Unrepresented Persons.

* * *

Definitional Cross-References

“Knows” See Rule 1.0(g)

“Reasonable” See Rule 1.0(i)

“Reasonably should know” See Rule 1.0(k)

Rule 4.4. Respect for Rights of Third Persons.

* * *

Definitional Cross-References

“Knows” See Rule 1.0(g)

“Reasonably should know” See Rule 1.0(k)

“Substantial” See Rule 1.0(m)

LAW FIRMS AND ASSOCIATIONS

Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers.

* * *

Definitional Cross-References

“Firm” and “Law firm” See Rule 1.0(d)

“Knows” See Rule 1.0(g)

“Partner” See Rule 1.0(h)

“Reasonable” See Rule 1.0(i)

Rule 5.2. Responsibilities of a Subordinate Lawyer.

* * *

Definitional Cross-References

“Reasonable” See Rule 1.0(i)

Rule 5.3. Responsibilities Regarding Nonlawyer Assistance.

* * *

Definitional Cross-References

“Firm” and “Law Firm” See Rule 1.0(d)

“Knows” See Rule 1.0(g)

“Partner” See Rule 1.0(h)

“Reasonable” See Rule 1.0(i)

Rule 5.4. Professional Independence of a Lawyer.

* * *

Definitional Cross-References

“Firm” and “Law firm” See Rule 1.0(d)

“Partner” See Rule 1.0(h)

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.

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

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

- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding; ~~or~~ (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice
 - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
 - (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
- (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent of, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services in this jurisdiction that:
- (1) are provided to the lawyer's employer or its organizational affiliates; ~~and~~ are not services for which the forum requires pro hac vice admission; and, when performed by a foreign lawyer and requires advice on the law of this or another jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or
 - (2) are services that the lawyer is authorized by federal law, tribal law or other law or rule to provide in this jurisdiction.
- (e) For purposes of paragraph (d):
- (1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or
 - (2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this Rule by, in the exercise of its discretion, the Wyoming Supreme Court.

COMMENT

* * *

[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, subject to the requirements of Rule 1.2(c).

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

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a U.S. or foreign 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.

[5] [7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraphs (c) and (d) 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.

[6] [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.

[7] [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 requirements 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.

~~[8]~~ [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. 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.

~~[9]~~ [11] When a lawyer has been 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.

~~[10]~~ [12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

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

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

~~[14]~~ [15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States Jurisdiction and is not disbarred or suspended from practice in any jurisdiction, or the equivalent thereof, 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 United States jurisdiction may also provide legal services in this jurisdiction on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another United States 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.

~~[12]~~ [16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work. To further decrease any risk to the client, when advising on the domestic law of a United States jurisdiction or on the law of the United States, the foreign lawyer authorized to practice under paragraph (d)(1) of this Rule needs to base that advice on the advice of a lawyer licensed and authorized by the jurisdiction to provide it.

~~[13]~~ [17] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c), or (d), or otherwise is subject to the disciplinary authority of this jurisdiction. *See* Rule 8.5(a).

~~[14]~~ [18] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. *See* Rule 1.4(b).

~~[15]~~ [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~~ 7.3.

Definitional Cross-References

"Reasonably" See Rule 1.0(i)

"Tribunal" See Rule 1.0(n)

* * *

Rule 5.7. Responsibilities Regarding Law-Related Services.

* * *

Definitional Cross-References

"Knows" See Rule 1.0(g)

"Reasonable" See Rule 1.0(i)

PUBLIC SERVICE

Rule 6.1. Pro Bono Public Service.

* * *

(b) In the alternative, a lawyer should voluntarily contribute \$500.00 per year to any existing non-profit organization which provides direct legal assistance to persons of limited means such as the Equal Justice Wyoming Foundation, ~~the Wyoming Legal Services Corporation offices~~ Legal Aid of Wyoming, the University of Wyoming College of Law clinics, or some similar organization.

COMMENT

* * *

~~[3]~~ [4] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by Equal Justice Wyoming, Legal Aid of Wyoming 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.

~~[3]~~ [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.

~~[4]~~ [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).

~~[5]~~ [6] Paragraph (a)(2)(i) 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.

~~[6]~~ [7] Paragraph (a)(2)(ii) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Acceptance of court appointments in which the fee is substantially below a lawyer's usual rate is encouraged under this section.

~~[7]~~ [8] Paragraph (a)(2)(iii) 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 profession are a few examples of the many activities that fall within this paragraph.

~~[8]~~ [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. 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.

~~[9]~~ [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.

~~[10]~~ [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.

~~[11]~~ [12] The responsibility set forth in this Rule is not intended to be enforced through the disciplinary process.

Definitional Cross-References

"Substantial" See Rule 1.0(m)

Rule 6.2. Accepting Appointment.

* * *

Definitional Cross-References

"Tribunal" See Rule 1.0(n)

Rule 6.3. Membership in Legal Services Organization.

* * *

Definitional Cross-References

"Law firm" See Rule 1.0(d)

"Knowingly" See Rule 1.0(g)

Rule 6.4. Law Reform Activities Affecting Client Interest.

* * *

Definitional Cross-References

“Knows” See Rule 1.0(g)

Rule 6.5. Non-Profit Limited Legal Services Programs.

* * *

Definitional Cross-References

“Law firm” See Rule 1.0(d)

“Knows” See Rule 1.0(g)

* * *

Rule 7.2. Advertising.

* * *

Definitional Cross-References

“Law Firm” See Rule 1.0(d)

“Written” See Rule 1.0(o)

Rule 7.3. Solicitation of Clients.

* * *

Definitional Cross-References

“Known” See Rule 1.0(g)

“Written” See Rule 1.0(o)

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters.

* * *

Definitional Cross-References

“Knowingly” and “Known” See Rule 1.0(g)

Rule 8.2. Judicial and Legal Officials.

* * *

Definitional Cross-References

“Knows” See Rule 1.0(g)

Rule 8.3. Reporting Professional Misconduct.

* * *

Definitional Cross-References

“Knows” See Rule 1.0(g)

“Substantial” See Rule 1.0(m)

Rule 8.4. Misconduct.

* * *

COMMENT

* * *

Definitional Cross-References

“Fraud” See Rule 1.0(e)

“Knowingly” and “Knows” See Rule 1.0(g)

“Reasonably should know” See Rule 1.0(k)

Rule 8.5. Disciplinary Authority; Choice of Law.

* * *

Definitional Cross-References

“Reasonably believes” See Rule 1.0(j)

“Tribunal” See Rule 1.0(n)
