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

(1) a nonlawyer~~:~~

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

(2) a nonlawyer is a ~~member of the governing board or an~~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.

~~COMMENTS~~
Comment

[1] The provisions of this Rule ~~largely~~ express ~~the~~ traditional limitations on sharing fees with and the co-ownership of law practices by nonlawyers. These limitations are to protect the lawyer's independence of ~~the lawyer's~~ professional judgment. ~~The Rule recognizes several exceptions to the general prohibition against fee splitting with nonlawyers. These are situations in which there is little risk of harm resulting from lay attempts to interfere with the independent professional judgment of the lawyer.~~

~~[2]~~ Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements ~~must~~ should not interfere with the lawyer's professional judgment.

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

DEFINITIONAL CROSS-REFERENCES

"Firm" and "~~Law Firm~~law firm" *See* RPC 1.0(~~e)~~ c)
"Partner" *See* RPC 1.0(~~i~~g)
"Reasonable" *See* RPC 1.0(~~j~~h)

~~Rule~~ 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 ~~person~~ in doing so.

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

(1)~~-~~ except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2)~~-~~ hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

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

(1)~~-~~ are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2)~~-~~ are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3)~~-~~ are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client 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 representation of an existing client in a jurisdiction in which the lawyer is admitted to practice.

(d)~~–~~ A lawyer admitted in another United States jurisdiction, and not disbarred or

suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

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

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

(e) A lawyer authorized to provide legal services in this jurisdiction pursuant to paragraph (d)(1) of this Rule may also provide pro bono legal services in this jurisdiction, provided that these services are offered through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically authorized in this jurisdiction and provided that these are services for which the forum does not require pro hac vice admission.

(f) A lawyer providing legal services in Tennessee pursuant to paragraph (c) or (d) shall advise the lawyer's client that the lawyer is not admitted to practice in Tennessee and shall obtain the client's informed consent to such representation.

(g) A lawyer providing legal services in Tennessee pursuant to paragraph (c) or (d) shall be deemed to have submitted himself or herself to personal jurisdiction in Tennessee for claims arising out of the lawyer's actions in providing such services in this state.

(h) A lawyer or law firm shall not employ or continue the employment of a disbarred or suspended lawyer as an attorney, legal consultant, law clerk, paralegal or in any other position of a quasi-legal nature.

Comment~~ary~~

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

[2] The definition of the practice of law is established by law and varies from one

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

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

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. *See also* RPCs 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 lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

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

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any

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

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

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

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

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

litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client 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 representation of an existing client 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 representation of an existing client in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client 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. 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. Lawyers desiring to provide pro bono legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult Tenn. Sup. Ct. R. 47.

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

admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

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

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education. *See* Tenn. Sup. Ct. R. 7, § 10.01 (Registration of In-House Counsel).

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

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. *See* RPC 8.5(a). Additionally, under paragraph (g), a lawyer providing legal services in Tennessee pursuant to paragraphs (c) or (d) shall be deemed to have submitted himself or herself to personal jurisdiction in Tennessee for claims arising out of the lawyer's actions in providing such services in this state.

[20] Paragraph (f) requires a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) to inform the client that the lawyer is not licensed to practice law in this jurisdiction. *See also* RPC 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal

services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by RPCs 7.1 to 7.5.

[22] Paragraph (h) provides that a lawyer or law firm may not employ or continue the employment of a disbarred or suspended lawyer as an attorney, legal consultant, law clerk, paralegal or in any other position of a quasi-legal nature. That paragraph is consistent with existing Tennessee law. *See* Formal Ethics Opinion 83-F-50 ~~and~~; Tenn. Sup. Ct. R. 9, § 18.7 (providing, "[u]pon the effective date of the order [imposing disbarment, suspension or transfer to disability inactive status], the respondent shall not maintain a presence or occupy an office where the practice of law is conducted~~.~~").

DEFINITIONAL CROSS-REFERENCES

~~None.~~
"Informed consent" *See* RPC 1.0(e)
"Reasonably" *See* RPC 1.0(h)
"Tribunal" *See* RPC 1.0(m)

~~Rule~~ RULE 5.6~~:~~ : RESTRICTIONS ON ~~THE~~ RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership~~ or~~, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except ~~with respect to~~ 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~~ between private parties~~.

~~COMMENTS~~

Comment

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

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

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

DEFINITIONAL CROSS-REFERENCES

~~None~~.

~~Rule~~ RULE 5.7~~:~~ : RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

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

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

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

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

~~COMMENTS~~
Comment

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

[2] ~~Rule~~ RPC 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those

circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. *See, e.g.*, RPC 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in ~~Rule 5.7~~paragraph (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example, through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2), unless the lawyer takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

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

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

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

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

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

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

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

[11] When the full protections of all of the Rules of Professional Conduct do not

apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest, and permissible business relationships with clients. *See also* RPC 8.4 (Misconduct).

DEFINITIONAL CROSS-REFERENCES

"Knows" *See* RPC 1.0(~~g~~f)
"Reasonable" and "~~Reasonably~~reasonably" *See* RPC 1.0(~~j~~h)

CHAPTER 6
PUBLIC SERVICE

~~Rule~~ RULE 6.1~~-~~: PRO BONO PUBLICO SERVICE

A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a)~~–~~ provide a substantial portion of such services without fee or expectation of fee to:

(1)~~-~~ persons of limited means; or

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

(b)~~–~~ provide any additional services through:

(1)~~-~~ delivery of legal services at no fee or at a 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~~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.

(c)~~–~~ In addition to providing pro bono publico legal services, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

~~Commentary~~

Comment

[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. -This Rule urges all lawyers to provide a minimum of 50 hours of pro bono service annually. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeals.

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

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

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (a)(2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory ~~attorneys'~~attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this ~~section.~~paragraph. 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. In some cases, a fee paid by the government to an appointed lawyer will be so low relative to what would have been a reasonable fee for the amount and quality of work performed – as in post-conviction death penalty cases – that the lawyer should be credited for the purpose of this Rule as having rendered the services without fee. This would also be the case when a lawyer is appointed as counsel in a criminal matter, the fee paid the lawyer is capped at a certain amount, and the lawyer expends significant time working on the case after the capped amount has been exceeded.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraph (a), the commitment can also 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), (b)(1), and (b)(2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraphs (b)(3) and (c).

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

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

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system, or the legal profession. A few examples of the many activities that fall within this paragraph are 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; serving as a mediator or an arbitrator; and engaging in legislative lobbying to improve the law, the legal system, or the profession.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a ~~firm's~~firm's aggregate pro bono activities.

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

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

[12] Because this Rule states an aspiration rather than a mandatory ethical duty, it is not intended to be enforced through disciplinary process.

DEFINITIONAL CROSS~~-REFERENCES~~-REFERENCE

"Substantial" and "~~Substantially~~substantially" *See* RPC 1.0(~~m).~~l)

~~Rule~~ RULE 6.2~~ :~~ ACCEPTING ~~COURT~~ 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 a 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.

~~COMMENTS~~
Comment

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

Appointed Counsel

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

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and ~~the lawyer~~ is subject to the same

limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

DEFINITIONAL CROSS~~-REFERENCES~~-REFERENCE

"Tribunal" *See* RPC 1.0(~~n~~m)
~~"Unreasonable" See RPC 1.0(o)~~

~~Rule~~ 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. However, the lawyer shall not knowingly participate in a decision or action of the organization:

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

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

~~COMMENTS~~

Comment

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

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

DEFINITIONAL CROSS-REFERENCES

"Knowingly" *See* RPC 1.0(~~g~~f)
"Law ~~Firm~~firm" *See* RPC 1.0(~~e)~~ c)
"Material" *See* RPC 1.0(~~h~~o)

~~Rule~~ 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.

~~COMMENT~~
Comment

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. *See also* RPC 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly ~~those contained in Rule~~RPC 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows ~~that~~ a private client might be materially benefitted.

DEFINITIONAL CROSS-REFERENCES

"Knows" *See* RPC 1.0(~~g~~f)
"Materially" *See* RPC 1.0(~~h~~o)

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

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

Comment~~ary~~

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term, limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the ~~lawyer's~~ lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. *See, e.g.*, RPCs 1.7, 1.9, and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the ~~client's~~client's informed consent to the limited scope of the representation. *See* RPC 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including RPCs 1.6 and 1.9(c), are applicable to the limited

representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with RPCs 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with RPC 1.10 only if the lawyer knows that another lawyer in the ~~lawyer's~~ lawyer's firm is disqualified by RPCs 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the ~~lawyer's~~ lawyer's firm, paragraph (b) provides that RPC 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with RPC 1.10 when the lawyer knows that the ~~lawyer's~~ lawyer's firm is disqualified by RPCs 1.7 or 1.9(a). By virtue of paragraph (b), however, a ~~lawyer's~~ lawyer's participation in a short-term, limited legal services program will not preclude the ~~lawyer's~~ lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the ~~program's~~program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term, limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, RPCs 1.7, 1.9(a), and 1.10 become applicable.

DEFINITIONAL CROSS-REFERENCE

"Knows" *See* RPC 1.0(~~g).~~f)

CHAPTER 7
INFORMATION ABOUT LEGAL SERVICES

~~Rule~~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~~, the lawyer's charges for fees or costs, or the law as relates to the services the lawyer will provide~~. A communication is false or misleading if it~~:

~~(a)~~ contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading~~; or~~.

~~(b) is likely to create an unjustified expectation about results the lawyer can achieve or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or~~

~~(c) compares the lawyer's services or fees with other lawyers' services or fees, unless the comparison can be factually substantiated.~~

~~COMMENT~~
Comment

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by ~~Rule~~ RPC 7.2 and solicitations directed to specific recipients permitted by ~~Rule~~ RPC 7.3. Whatever means are used to make known a lawyer's services, statements about them ~~should~~must be truthful. ~~The prohibition in paragraph (b) of statements that may create an "unjustified expectation" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to specific factual and legal circumstances.~~

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no

reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

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

[5] A lawyer may advertise the fact that a subjective characterization or description has been conferred upon him or her by an organization as long as the organization has made inquiry into the lawyer's fitness and does not issue or confer such designations indiscriminately or for a price.

DEFINITIONAL CROSS~~-REFERENCES~~-REFERENCE

"~~Consult~~Material" and "~~Consultation~~materially" *See* RPC 1.0(~~e~~o)
~~"Material" and "Materially" See RPC 1.0(h)~~
~~"Reasonable" See RPC 1.0(j)~~

~~Rule~~ RULE 7.2~~-~~: ADVERTISING ~~AND OTHER COMMUNICATIONS NOT DIRECTED TO SPECIFICALLY IDENTIFIED RECIPIENTS~~

(a) Subject to the requirements of paragraphs (b) through ~~(e~~(d) below and ~~Rules~~RPCs 7.1, ~~-~~7.~~4, and~~ 3, 7.4, and 7.5, a lawyer may advertise ~~professional~~ services ~~or seek referrals~~ through ~~public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television, world wide web site, or other forms of communication not directed to specifically identified recipients.~~

~~(b) Within three days after the publication, distribution, or dispatch of an advertisement~~ written, recorded, or ~~a~~ electronic communication ~~not directed to a specifically identified recipient, the lawyer shall file a copy of the advertisement or communication with the Board of Professional Responsibility, provided, however, that such filing is not required for any communication that only includes the name, address, and profession of the lawyer or that has been exempted from the filing requirement by the Board of Professional Responsibility.~~ , including public media.

~~(1) If communications that are similar in all material respects are published or displayed more than once or distributed to more than one person, the lawyer may comply with this requirement by filing a single copy of the communication~~

(b) A copy or recording of each advertisement shall be retained by the lawyer for two years after its last dissemination along with a record of when and where the advertisement appeared.

~~(2) If a communication that has previously been filed with the Board is changed in any material respect, notice of the changes shall be filed with the Board within three days after its publication, distribution, or dispatch.~~

(c) A lawyer shall not give anything of value to a person for recommending or publicizing the lawyer's services except that a lawyer may pay for the following:

(1) the reasonable costs of advertisements ~~or other communications~~ permitted by this Rule~~, Rule 7.3, or Rule 7.5~~;

(2) the usual charges of a registered intermediary organization as permitted by ~~Rule~~RPC 7.6;

(3) a sponsorship fee or a contribution to a charitable or other non-profit organization in return for which the lawyer will be given publicity as a lawyer; or

(4) a law practice in accordance with ~~Rule~~RPC 1.17.

(d) Except for communications by registered intermediary organizations, any ~~communication subject to this Rule or Rule 7.3(b)~~advertisement shall include the name and office address of at least one lawyer or law firm assuming responsibility for the communication.

~~COMMENTS~~

Comment

[1] This Rule governs general advertising through public media and other communications that are not directed to specifically identified individuals. The Rule encompasses all possible media through which such communications may be directed ~~, including print, broadcasting, and computer-driven technology.~~to the public. Communications that are directed to specifically identified recipients are governed by ~~Rule~~RPC 7.3.

[2] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation~~,~~ but also through organized information campaigns in the form of advertising. ~~Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However~~Further, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ~~ought to prevail over considerations of tradition.~~is significant. Nevertheless, advertising by lawyers ~~entails the risk of practices that are~~ shall not contain false or misleading ~~or overreaching~~communications about the lawyer or the lawyer's services.

[3] ~~This~~Among other things, this Rule permits public dissemination of information concerning a lawyer's name or firm name, address, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients

regularly represented; and other information that might invite the attention of those seeking legal assistance.

[4] ~~Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for providing the public with information, and prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.~~

~~[5]~~ Neither this Rule nor ~~Rule~~RPC 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

~~[6] Paragraph (b) requires that a lawyer file a copy of any advertisement or other communication governed by this Rule with the Board of Professional Responsibility within three days after publication, distribution, or dispatch.~~

[5] Paragraph (b) requires that a lawyer retain a copy or recording of any advertisement for two years after its last dissemination along with a record of when and where the advertisement appeared. If advertisements that are similar in all material respects are published or displayed more than once or distributed to more than one person, the lawyer may comply with this requirement by retaining a single copy of the advertisement for two years after the last of the materially similar advertisements are disseminated. A lawyer may comply with the ~~filing~~ requirement of paragraph (b) by complying with guidelines that may be adopted by the Board of Professional Responsibility concerning ~~appropriate methods by which a lawyer may provide the Board with notice of communications made by way of web~~ certain types of advertisements, including websites, e-mail, or other electronic forms of communication or of changes to such communications. ~~This Rule does not require that communications be subject to review prior to dissemination, although a lawyer is free to request such a review from the Board. This Rule provides the Board an opportunity to monitor lawyer communications to the public while not placing any sort of prior restraint on publication.~~

Paying Others to Recommend a Lawyer

~~[7]~~[6] A lawyer is allowed to pay for advertising permitted by this Rule and for the purchase of a law practice in accordance with the provisions of ~~Rule~~RPC 1.17, but otherwise is not permitted to pay another person for channeling professional work to the lawyer. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

[7] A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See RPC 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

DEFINITIONAL CROSS-REFERENCES

"Law ~~Firm~~firm" *See* RPC 1.0(~~e)~~ c)
~~"Material" See RPC 1.0(h)~~
"Reasonable" *See* RPC 1.0(~~j~~h)
"Written" *See* RPC 1.0(n)

~~Rule~~ RULE 7.3~~:~~ SOLICITATION ~~AND OTHER COMMUNICATIONS DIRECTED TO SPECIFICALLY IDENTIFIED RECIPIENTS~~OF POTENTIAL CLIENTS

(a) ~~If a significant motive for the solicitation is the lawyer's pecuniary gain, a~~A lawyer shall not ~~solicit professional employment~~ by in-person, live telephone, or real-time electronic contact solicit professional employment from a ~~prospective~~potential client ~~who~~ 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 ~~not initiated the contact with the lawyer and with whom the lawyer has no~~a family, close personal, or prior professional relationship~~.~~ with the lawyer; or

(3) has initiated a contact with the lawyer.

(b) A lawyer shall not solicit professional employment from a potential client by written, recorded, or electronic communication or by in-person, live telephone, or real-time electronic contact~~, or by a writing, recording, telegram, facsimile, computer transmission or other mode of communication directed to a specifically identified recipient who has not initiated the contact with the lawyer~~ even when not otherwise prohibited by paragraph (a), if:

(1) the ~~person solicited~~ potential client has made known to the lawyer a desire not to be ~~contacted by~~ solicited by the lawyer; or

(2) the ~~communication constitutes overreaching,~~ solicitation involves coercion, duress, fraud, harassment, ~~undue influence,~~ intimidation, overreaching, or ~~fraud~~undue influence; or

(3) a significant motive for the solicitation is the lawyer's pecuniary gain and the communication ~~—~~concerns an action for personal injury, worker's compensation, wrongful death, or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a member of that person's family, unless the accident or disaster occurred more than thirty (30) days prior to the mailing or transmission of the communication or the lawyer has a family, close personal, or prior professional relationship with the person solicited.

(c) If a significant motive for the solicitation is the lawyer's pecuniary gain, a lawyer shall not send ~~or dispatch a~~ a written, recorded, or electronic communication soliciting professional employment from a specifically identified recipient who ~~has not initiated a contact with the lawyer and with whom the lawyer has no family or prior professional relationship,~~ is not a person specified in paragraphs (a)(1) or (a)(2) or (a)(3), unless the communication complies with the following requirements:

(1) ~~Each communication, including envelopes and self-mailing brochures or pamphlets, shall include the~~ The words "~~THIS IS AN ADVERTISEMENT" as follows:~~

~~(a) In written communications sent by mail, telegraph, facsimile, or computer transmission, the required wording shall~~ Advertising Material" appear ~~in conspicuous print size~~ on the outside of the envelope, if any, in which a communication is sent and at the beginning and ~~end of the written material. If the~~ ending of any written ~~communication is a self-mailing brochure or pamphlet, the required wording shall appear on the address panel of the brochure or pamphlet.~~ , recorded or electronic communication.

~~(b) In video communications, the required wording shall appear conspicuously in the communication for at least five seconds at the beginning and five seconds at the end of the communication and the required wording of the audio portion of the video communication shall be presented as required in subsection (c)(1)(c) below.~~

~~(c) In audio communications, the required wording shall be presented at both the beginning and end of the communication in a tone, volume, clarity and speed of delivery at least equivalent to the clearest quality tone, volume, clarity and speed used elsewhere in the communication.~~

(2) A lawyer shall not state or imply that a communication otherwise permitted by these rules has been approved by the Tennessee Supreme Court or the Board of Professional Responsibility.

(3) If a contract for representation is mailed with the communication, the top of each page of the contract shall be marked "SAMPLE" and the words "DO NOT SIGN" shall appear on the client signature line.

(4) Written communications shall not be in the form of or include legal pleadings or other formal legal documents.

(5) Communications delivered to ~~prospective~~potential clients shall be sent only by regular U.S. mail and not by registered, certified, or other forms of restricted delivery, or by express delivery or courier.

(6) Any communication seeking employment by a specific ~~prospective~~potential client in a specific matter shall comply with the following additional requirements:

(i) The communication shall disclose how the lawyer obtained the information prompting the communication;

(ii) The subject matter of the proposed representation shall not be disclosed on the outside of the envelope (or self-mailing brochure) in which the communication is delivered; and

~~(iii) The first sentence of the communication shall state, "IF YOU HAVE ALREADY HIRED OR RETAINED A LAWYER IN THIS MATTER, PLEASE DISREGARD THIS MESSAGE."~~

(iii) The first sentence of the communication shall state, "IF YOU HAVE ALREADY HIRED OR RETAINED A LAWYER IN THIS MATTER, PLEASE DISREGARD THIS MESSAGE."

(7) A copy of each written, audio, video, or electronically transmitted communication sent to a specific recipient ~~shall be filed with the Board of Professional Responsibility within three days~~under this Rule shall be retained by the lawyer for two years after ~~the dispatch of the communication. At the same time, the lawyer dispatching the communication shall also file the name of the person contacted and the person's address, telephone number, or telecommunication address to which the communication was sent. If communications identical in content are sent to two or more persons, the lawyer may comply with this requirement by filing a single copy of the communication together with a list of the names and addresses of the persons to whom the communications were sent. If the lawyer periodically sends the identical~~

~~communication to additional persons, lists of the additional names and addresses shall be filed with the Board of Professional Responsibility no less frequently than monthly~~its last dissemination along with a record of when, and to whom, it was sent.

(d) Unless the ~~subject matter~~contents thereof include a solicitation of ~~the communication is restricted to matters of general legal interest or to an announcement~~employment, a lawyer need not comply with the requirements of paragraph (c) above when sending announcements of an association or affiliation with another lawyer that complies with the requirements of ~~Rule~~RPC 7.5, ~~a lawyer who sends~~ newsletters, brochures, and other similar communications ~~to persons who have not requested the communication or with whom the lawyer has no family or prior professional relationship shall comply with the requirements of paragraph (c) above.~~ .

~~COMMENTS~~

Comment

[1] There is a potential for abuse inherent in direct in-person ~~or~~ , live telephone, or real-time electronic contact by a lawyer with a ~~prospective~~potential client known to need legal services. These forms of contact between a lawyer and a ~~specifically targeted recipient~~ potential client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The ~~prospective~~potential client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and overreaching. The restrictions set forth in this Rule, however, do not apply to efforts by a lawyer to get hired as an in-house counsel by a potential client.

[2] This potential for abuse inherent in direct in-person, live telephone, or real-time electronic solicitation of ~~prospective~~potential clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under this Rule offer alternative means of conveying necessary information to ~~those~~ potential clients who may be in need of legal services. ~~Written~~Advertising and written and recorded communications ~~that~~ which may be mailed or electronically transmitted make it possible for a ~~prospective~~potential client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the ~~prospective~~potential client to direct in-person, live telephone, or real-time electronic persuasion that may

overwhelm the client's judgment.

[3] The use of general advertising and written ~~and~~ , recorded, or electronic communications to transmit information from ~~a~~ lawyer to ~~a specifically identified recipient~~potential client, rather than direct in-person ~~or~~ , live telephone, or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. ~~The contents of communications permitted under this Rule are permanently recorded and filed with the Board of Professional Responsibility.~~ The contents of direct in-person ~~or~~ , live telephone, or real-time electronic conversations between a lawyer and a ~~prospective~~potential client can be disputed and ~~are~~ may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against an individual with whom the lawyer has a ~~prior~~ family, close personal, or prior professional relationship, or ~~where~~in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. ~~-~~ Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the ~~prohibitions in Rule~~general prohibition in RPC 7.3(a) and the requirements of RPC 7.3(~~b)(3)~~c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation that contains information which is false or misleading within the meaning of ~~Rule~~RPC 7.1, which involves coercion, duress, ~~or~~fraud, harassment ~~within the meaning of Rule 7.3(b)(2),~~ intimidation, overreaching, or undue influence, which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer ~~within the meaning of Rule 7.3(b)(2)~~, or which occurs within thirty (30) days after an accident or disaster involving the individual or a member of the individual's family, is prohibited by RPC 7.3(b). Moreover, if after sending a letter or other communication to a client as permitted by ~~Rule~~RPC 7.2 the lawyer receives no response, any further effort to communicate with the ~~prospective~~potential client may violate the provisions of ~~Rule~~RPC 7.3(b)(1). Communications directed to specifically identified recipients must be identified as advertisements, may need to be marked with other disclaimers, and cannot be formatted or delivered in such a manner as to mislead the recipient about the nature of the communication.

[6] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties if the lawyer's purpose is to inform such entities of the lawyer's willingness to cooperate with the plan in compliance with ~~Rule~~RPC 7.6. This form of communication is not directed to a ~~prospective~~potential client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become ~~prospective~~potential clients of the lawyer. Under these circumstances, the activity ~~that~~ which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to, and serve the same purpose as, advertising permitted under ~~Rule~~RPC 7.2.

[7] The ~~requirements~~ requirement in ~~Rule~~RPC 7.3(c) that certain communications be marked as advertisements and contain other disclaimers do not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. ~~General~~Nor do those requirements apply to general announcements by lawyers, including changes in personnel or office location, ~~do not constitute~~newsletters, brochures, and other similar communications ~~soliciting~~ which do not contain a solicitation of professional employment ~~from a client known to be in need of legal services within the meaning of this Rule~~.

~~[8] Rule 7.3 is not intended to apply to communications such as general interest newsletters or announcements of association or affiliation that comply with Rule 7.5. Other types of newsletters, brochures, and similar communications sent to specifically identified recipients must comply with Rule 7.3~~

[8] Paragraph (c)(6) requires that a lawyer retain a copy of each written, audio, video, or electronically transmitted communication sent to a specific recipient under this Rule for two years after its last dissemination along with a record of the name of the person contacted and the person's address, telephone number, or telecommunication address to which the communication was sent. If communications identical in content are sent to two or more persons, the lawyer may comply with this requirement by retaining a single copy of the communication together with a list of the names and addresses of the persons to whom the communications were sent.

DEFINITIONAL CROSS-REFERENCES

"Fraud" *See* RPC 1.0(~~f~~d)
"Known" *See* RPC 1.0(~~g)~~ f)
~~"Material~~"Written" *See* RPC 1.0(~~h~~n)

~~Rule~~ RULE 7.4~~-~~: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

Subject to the requirements of ~~Rules~~RPCs 7.1, 7.2, and 7.3,

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

(b) Except as permitted by paragraphs (c) and (d), a lawyer shall not state that the lawyer is a specialist, specializes, or is certified or recognized as a specialist in a particular field of law.

(c) 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.

(d) A lawyer who has been certified as a specialist in a field of law by the Tennessee Commission on Continuing Legal Education and Specialization may state that the lawyer "is certified as a specialist in [field of law] by the Tennessee Commission on C.L.E. and Specialization." A lawyer so certified may also state that the lawyer is certified as a specialist in that field of law by an organization recognized or accredited by the Tennessee Commission on Continuing Legal Education and Specialization as complying with its requirements, provided the statement is made in the following format: "[Lawyer] is certified as a specialist in [field of law] by [organization~~].~~"]."

~~COMMENTS~~
Comment

[1] This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate.

[2] However, a lawyer may not communicate that the lawyer is a "specialist," practices a "specialty," "specializes in" a particular field, or that the lawyer has been recognized or certified as a specialist in a particular field of law, except as provided by this Rule. Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office, as reflected in paragraph (c).

[3] Paragraph (d) permits a lawyer to communicate that he or she is a specialist or has been certified or recognized as a specialist when the lawyer has been so certified or recognized by the Tennessee Commission on Continuing Legal Education and Specialization. The certification procedures are designed to require that the lawyer demonstrate higher degree of specialized ability and experience than is suggested by general licensure to practice law. This paragraph also permits the lawyer to state that he or she is certified by other professional organizations, provided that such organizations have been accredited by the Commission as complying with its requirements to issue such certification.

DEFINITIONAL CROSS-REFERENCE

"Substantially" *See* RPC 1.0(~~m~~l)

~~Rule~~ RULE 7.5~~:~~ : FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates ~~Rule~~RPC 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 ~~if it does~~ is not otherwise ~~violate Rule~~in violation of RPC 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

~~COMMENTS~~
Comment

[1] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity~~,~~ or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased or retired partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven ~~to be~~ a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[2] Paragraph (c) does not require a change in a law firm's name or letterhead when a member of the firm interrupts his or her practice to serve, for example, as an elected member of the Tennessee General Assembly so long as the lawyer reasonably expects to resume active and regular practice with the firm at the end of the legislative session. Such a hiatus from practice is not for a substantial period of time. If, however, a lawyer were to curtail his or her practice and enter public service for a longer or indefinite period of time, the lawyer's firm would have to alter its name and letterhead.

[3] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact ~~partners~~associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests ~~partnership in the practice of law~~that they are practicing law together in a firm.

DEFINITIONAL CROSS-REFERENCES

"Firm" and "~~Law Firm~~"law firm" *See* RPC 1.0(~~e)~~ c)
"Substantial" *See* RPC 1.0(~~m~~l)

~~Rule~~ RULE 7.6: INTERMEDIARY ORGANIZATIONS

(a) An intermediary organization is a lawyer-advertising cooperative, lawyer referral service, prepaid legal insurance provider, or a similar organization the business or activities of which include the referral of its customers, members, or beneficiaries to lawyers for the performance of fee-generating legal services or the payment for or provision of legal services to the organization's customers, members, or beneficiaries in matters for which the organization does not bear ultimate responsibility. A tribunal appointing or assigning lawyers to represent parties before the tribunal or a government agency performing such functions on behalf of a tribunal is not an intermediary organization under this Rule.

(b) A lawyer shall not seek or accept a referral of a client, or compensation for representing a client, from an intermediary organization if the lawyer knows or reasonably should know that:

(1) the organization:

(i) is owned or controlled by the lawyer, a law firm with which the lawyer is associated, or a lawyer with whom the lawyer is associated in a firm; or

(ii) is engaged in the unauthorized practice of law; or

(iii) engages in marketing activities that are false or misleading or are otherwise prohibited by the Board of Professional Responsibility; or

(iv) has not registered with the Board of Professional Responsibility and complied with all requirements imposed by the Board; or

(2) the lawyer will be unable to represent the client in compliance with these Rules.

~~COMMENTS~~
Comment

[1] For there to be equal access to justice, there must be equal access to lawyers. For there to be equal access to lawyers, potential clients must be able to find lawyers and

have the economic resources needed to pay the lawyers a reasonable fee for their services. In an effort to assist prospective clients to find and be able to retain competent lawyers, lawyers and nonlawyers alike have formed a variety of organizations designed to bring clients and lawyers together and to provide a vehicle through which the lawyers can be fairly compensated and the clients can afford the services they need. Some of these intermediary organizations operate as charities. Others operate as businesses. Because they ultimately bear the liability of their insureds, liability insurance companies that pay for or otherwise provide lawyers to defend their insureds are not intermediary organizations within the meaning of this Rule. Because the concerns arising from the referral of fee-generating business to lawyers are not implicated by the referral of a matter for which the lawyer does not expect to be paid a fee, the referral of such matters is exempted from this Rule. Similarly, the process by which tribunals or court agencies appoint or assign lawyers to represent parties should carry with it appropriate safeguards outside of this Rule, and these activities are likewise exempted from this Rule.

[2] The requirements set forth in paragraph (b) are intended to protect the clients who are represented by lawyers to whom they have been referred or assigned by an intermediary organization. It is the responsibility of each lawyer who would participate in the activities of an intermediary organization to act reasonably to ascertain that the organization meets the standards set forth in paragraph (b). Normally it will be sufficient for the lawyer to ascertain that the organization is registered with the Board of Professional Responsibility and to review the materials the organization has filed with the Board in compliance with the Board's reporting requirements. If, however, by virtue of his or her participation in the activities of an intermediary organization, a lawyer comes to know that the organization does not meet the standards set forth in paragraph (b), the lawyer shall terminate his or her participation in the activities of the organization and should so advise the Board of Professional Responsibility.

DEFINITIONAL CROSS-REFERENCES

"Firm" and "~~Law Firm~~law firm" *See* RPC 1.0(~~e)~~ c)
"Knows" *See* RPC 1.0(~~g~~f)
"Reasonably ~~Should Know~~should know" *See* RPC 1.0(~~i)~~ j)

~~Rule~~ 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 ~~of material fact~~ 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~~RPC 1.6.

~~COMMENTS~~
Comment

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a ~~materially~~ material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. ~~This~~Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the Fifth Amendment to the United States Constitution and ~~Article~~article I, ~~Section~~section 9 of the Tennessee Constitution. A person relying on such a provision in response to a question, however, should do so openly and not use the right of non-disclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including RPC 1.6 and, in some cases, RPC 3.3.

[4] The duties owed by lawyers with respect to communications with disciplinary

authorities apply to judicial disciplinary authorities as well as lawyer disciplinary authorities.

DEFINITIONAL CROSS-REFERENCES

"Knowingly" or "~~Known~~known" *See* RPC 1.0(~~g~~f)
"Material" *See* RPC 1.0(~~h~~o)

~~Rule~~ RULE 8.2~~-~~: JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or that is made with reckless disregard as to its truth or falsity concerning the qualifications or integrity of the following persons:

(1) a judge;~~-~~

(2) an adjudicatory officer or public legal officer; or~~-~~

(3) 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.

~~COMMENTS~~
Comment

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

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

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized and to responsibly speak out when necessary to prevent or rectify injustice or to promote needed improvements in the judicial system.

DEFINITIONAL CROSS-REFERENCE

"Knows" *See* RPC 1.0(~~g~~f)

~~Rule~~ RULE 8.3~~-~~: REPORTING PROFESSIONAL MISCONDUCT

(a) ~~-~~A lawyer ~~having knowledge~~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 Disciplinary Counsel of the Board of Professional Responsibility.

(b) ~~-~~A lawyer ~~having knowledge~~who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the Disciplinary Counsel of the Court of the Judiciary.

(c) ~~-~~This Rule does not require disclosure of information otherwise protected by ~~Rule~~RPC 1.6 or ~~of~~ information gained by a lawyer or judge while serving as a member of a lawyer assistance program approved by the Supreme Court of Tennessee or by the Board of Professional Responsibility ~~to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege~~.

~~COMMENTS~~

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of ~~Rule~~RPC 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions~~,~~ but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum

of evidence of which the lawyer is aware. Similar considerations apply to the reporting of judicial misconduct. ~~However, nothing in this Rule prohibits a lawyer from reporting other professional misconduct even when the lawyer is not under a mandatory duty to do so.~~

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the ~~rules~~ Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer or judge in the course of that lawyer's or judge's participation in an approved ~~lawyers' or judges'~~ lawyers or judges assistance program. In that circumstance, providing for ~~the confidentiality of such information~~ an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such ~~programs.~~ a program. Conversely, without such ~~confidentiality~~ an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. ~~The Rule therefore exempts the lawyer from the reporting requirements of paragraphs (a) and (b) with respect to information that would be privileged if the relationship between the impaired lawyer or judge and the recipient of the information were that of a client and a lawyer. On the other hand, a lawyer who receives such information would nevertheless be required to comply with the Rule 8.3 reporting provisions to report misconduct if the impaired lawyer or judge indicates an intent to engage in illegal activity, for example, the conversion of client funds to his or her use~~ The extent to which information received by a lawyer or judge participating in an approved lawyers assistance program must be kept confidential is governed not by these rules, but by the rules of the program or other law. *See, e.g.*, Tenn. Code Ann.. §§ 23-4-104 and -105; Tenn. Sup. Ct. R. 33.10.

DEFINITIONAL CROSS-REFERENCE

"Substantial" *See* RPC 1.0(~~m~~l)

~~Rule~~ RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) ~~attempt to, or~~ state or imply an ability to influence a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

~~COMMENTS~~
Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return.

However, some kinds of ~~offense~~ offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty ~~or~~ , breach of trust, or serious interference with the administration of justice are in that category. Although under certain circumstances a single offense reflecting adversely on a lawyer's fitness to practice~~—~~ – such as a minor assault~~—~~ – may not be sufficiently serious to warrant discipline, a pattern of repeated offenses, even ones that are of minor significance when considered separately, can indicate indifference to legal obligation.

~~[2]~~[3] A lawyer who, in the course of representing a client, knowingly manifests, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status~~, may violate~~ violates paragraph (d) ~~if~~when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d).

~~[3]~~[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of ~~Rule~~RPC 1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.–

~~[4]~~[5] Paragraph (c) prohibits lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Such conduct reflects adversely on the lawyer's fitness to practice law. In some circumstances, however, prosecutors are authorized by law to use, or to direct investigative agents to use, investigative techniques that might be regarded as deceitful. This Rule does not prohibit such conduct.–

~~[5]~~[6] The lawful secret or surreptitious recording of a conversation or the actions of another for the purpose of obtaining or preserving evidence does not, by itself, constitute conduct involving deceit or dishonesty. *See* ~~Rule~~RPC 4.4.

~~[6]~~[7] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as

trustee, executor, administrator, guardian, agent and officer, ~~or~~ director, or manager of a corporation or other organization.

~~[~~7[8] Paragraph (f) precludes a lawyer from assisting a judge or judicial officer in conduct that is a violation of the rules of judicial conduct. A lawyer cannot, for example, make a gift, bequest, favor, or loan to a judge, or a member~~'s~~ of the judge's family who resides in the judge's household, unless the judge would be permitted to accept, or acquiesce in the acceptance of such a gift, favor, bequest, or loan in accordance with Canon 4, Section D(5) of the Code of Judicial Conduct.

~~[~~8[9] In both their professional and personal activities, lawyers have special obligations to demonstrate respect for the law and legal institutions. Normally, a lawyer who knowingly fails to obey a court order demonstrates ~~a~~ disrespect for the law that is prejudicial to the administration of justice. Failure to comply with a court order is not a disciplinary offense, however, when it does not evidence disrespect for the law either because the lawyer is unable to comply with the order or the lawyer is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

DEFINITIONAL CROSS-REFERENCES

"Fraud" *See* RPC 1.0(~~f~~d)
"Knowingly" *See* RPC 1.0(~~g)~~ f)
"Tribunal" *See* RPC 1.0(~~n~~m)

~~Rule~~ RULE 8.5~~:~~: DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a)~~–~~ Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the ~~lawyer's~~lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

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

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

(2)~~-~~ for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.~~-~~

Comment~~ary~~

Disciplinary Authority~~-~~

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. *See* Tenn. Sup. Ct. R. 9~~-~~, § 1 ("Jurisdiction") and § 17 ("Reciprocity Discipline").~~-~~

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice

before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (~~i~~1) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, and (~~ii~~2) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions.

[4] Paragraph (b)(1) provides that, as to a ~~lawyer's~~lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[6] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

DEFINITIONAL CROSS~~-REFERENCE~~-REFERENCES

~~None.~~

"Tribunal" *See* RPC 1.0(m)

~~TTRANSITIONAL RULES GOVERNING THE IMPLEMENTATION OF THE TENNESSEE RULES OF PROFESSIONAL CONDUCT~~

~~The foregoing Rules shall become effective as of March 1, 2003, and shall have prospective application only, applying to all relationships existing on, and conduct taken from, that date forward. However, special provisions are made for the operation of the following Rules:~~

~~(a) The provisions governing contingent fee agreements contained in RPC 1.5(c) shall apply only to those agreements that are entered into or amended on or after March 1, 2003;~~

~~(b) The provisions requiring a writing contained in RPC 1.7, 1.8(g), 1.9, 1.11(a), and 1.12 shall apply only to conflicts of interest that arise on or after March 1, 2003;~~

~~(c) The provisions governing client consent contained in RPC 1.8(a) and 1.8(i) shall apply only to those transactions that are entered into or amended on or after March 1, 2003.~~

Redline New 2011 TRPC to Current TRPC