

# **THE PROPOSED NEW DISCIPLINARY RULES**

## **Government Lawyers Section Program**

Moderator:

**Carl Reynolds**

Office of Court Administration  
Austin, Texas

Panelists:

**Linda Eads**

Southern Methodist University School of Law  
Dallas, Texas

**Susan Farris**

State Bar of Texas  
Office of the Chief Disciplinary Counsel  
Dallas, Texas

**Lillian Hardwick**

Attorney at Law  
Houston, Texas

**Kennon Peterson**

Rules Attorney, Supreme Court of Texas  
Austin, Texas

Friday, June 11, 2010  
1:30 p.m. – 3:00 p.m.





**Carl Reynolds**  
**Office of Court Administration**  
512.463.1626/512.925.4827  
[carl.reynolds@courts.state.tx.us](mailto:carl.reynolds@courts.state.tx.us)

Carl Reynolds is an attorney with extensive experience in all three branches of Texas state government. He is currently the Director of the Office of Court Administration in the judicial branch. From 1997 to 2005 he was General Counsel for the Texas Department of Criminal Justice (TDCJ), the executive branch agency responsible for prisons, probation, and parole. From 1993 to 1997, he was General Counsel to the Texas Board of Criminal Justice, which is the governing body for TDCJ. Prior to 1993, he was the Executive Director of the Texas Punishment Standards Commission (a blue-ribbon legislative agency charged with reforming the State's sentencing laws and corrections resources), General Counsel to the Texas Senate Committee on Criminal Justice, Director of the Senate's redistricting staff, and a briefing attorney for the Texas Court of Criminal Appeals.

Mr. Reynolds maintains a number of involvements with state and national organizations in the justice arena, include active involvement (either current or past) with the following organizations: National Center for State Courts; Conference of State Court Administrators; Permanent Judicial Commission for Children, Youth & Families; American Bar Association Sentencing Committee; ABA Task Force on the Legal Status of Prisoners; Council of State Governments Justice Center; National Institute of Corrections; American Correctional Association; Vera Institute of Justice; Center for Criminology and Criminal Justice Research, University of Texas at Austin; Edna McConnell Clark Foundation; National Association of Sentencing Commissions; National Conference of State Legislatures; and Big Brothers/Big Sisters of Austin.

Mr. Reynolds holds a J.D. with honors from the University of Texas School of Law, a master's degree from the Lyndon B. Johnson School of Public Affairs, and a B.A. with honors from the University of Cincinnati.

## **LINDA S. EADS**

**Professor Eads has taught at the Southern Methodist University School of Law since January 1986. She teaches and writes in the areas of evidence, legal ethics, constitutional law and women and the law. At Southern Methodist University she has received the University Scholar/Teacher of the Year Award, the University Golden Mustang Teaching Award, the Law School's Don Smart Teaching Award (4 times), and the Law School's Don Smart Directed Research Award (3 times). In 2009, Professor Eads received the Lola Wright Foundation Award given by the Texas Bar Foundation to one lawyer each year for outstanding public service in advancing and enhancing legal ethics in Texas. In 2007, Professor Eads received the President's Award from the State Bar of Texas for her work on the Texas Disciplinary Rules of Professional Conduct. She was recently named one of 30 Extraordinary Women in Texas Law by the Texas Lawyer.**

**From January 1999 to August 2000, Professor Eads was on leave from the Law School in order to assume the post of Deputy Attorney General for Litigation for the State of Texas under Attorney General John Cornyn. In this position she directed the State's civil litigation and supervised more than 300 lawyers in the 10 civil litigation divisions in the Texas Attorney General's Office.**

**Prior to joining the Law School faculty, Professor Eads served as a trial attorney with the United States Department of Justice, Tax Division. In this capacity she prosecuted and investigated tax evaders, tax protestors and drug dealers throughout the United States. She also served in the Special Litigation Unit that sought injunctions against abusive tax shelters. While at the Department of Justice, Professor Eads received the Attorney General's Special Commendation Award and twice was honored with the Department's Outstanding Attorney Award.**

## **SUSAN MORGAN FARRIS**

State Bar of Texas  
Office of the Chief Disciplinary Counsel  
14651 Dallas Parkway, Suite 925  
Dallas, Texas 75254  
972-383-2900  
sfarris@texasbar.com

### **EMPLOYMENT**

State Bar of Texas, Office of the Chief Disciplinary Counsel; Dallas, Texas  
Senior Trial Attorney, July 2005 to present  
Assistant Disciplinary Counsel, November 2004 to June 2005  
Law Office of Susan Morgan Farris  
June 1985 to November 2004  
American Express Financial Advisors; Richardson, Texas  
Office Manager/Client Service Coordinator, November 2001 to November  
2004  
ESS College; Dallas, Texas  
Faculty – Paralegal Studies and Office Technology Studies  
June 1995 to June 2001  
Courses Taught: Business Law, Legal Procedures, Bankruptcy, Business  
Associations, Introduction to Paralegal, Business English  
Kyle, Schuerenberg & Grimes; Mesquite, Texas  
Associate, November 1983 to April 1985  
Law Clerk, June 1983 to November 1983

### **LEGAL EXPERIENCE**

#### **Areas of Practice:**

- Attorney Discipline: representing the Commission for Lawyer Discipline in the prosecution of disciplinary matters in district court and before evidentiary panels; investigate and prosecute complaints filed against Texas attorneys
- Business Litigation: initial demand letters; filing suit; extensive discovery; filing and defending motions; research; brief writing; trials – jury and non-jury; post-trial motions; appeals – research, brief writing, oral arguments
- Municipal Law: prosecuting municipal offenses
- Creditors' Rights: drafting contracts; interpreting contracts; all phases of collection work – pre-judgment collections, filing suit, jury and non-jury trials, post-judgment collections
- Corporate Law: forming corporations – for profit and not-for-profit; forming partnerships; maintaining corporate records; drafting contracts; dissolving corporations
- Estate Planning: assessing financial situations; drafting wills, powers of attorney, directives to physician, medical powers of attorney, medical authorizations

- Probate: probating estates – with and without wills; administering estates; trials; guardianships
- Real Estate: preparing deeds, deeds of trusts, promissory notes, closing documents; conducting closings; conducting foreclosures
- Domestic Relations: filing and completing divorces – contested and non-contested; divorce trials; filing and defending motions; participating in mediations; adoptions; ad litem appointments
- Criminal Law: release from jail; plea bargains; filing and defending motions
- Personal Injury Law: initial demand letters; filing suit; discovery; settlement negotiations

**Areas of Experience:**

- Courtroom appearances: motion practice; jury and non-jury trials; appellate court argument; municipal court prosecution
- Discovery: preparation of discovery requests; responding to discovery requests; motion practice
- Legal research and brief writing: trial court, appellate court
- Drafting petitions, motions, judgments, orders, contracts, settlement agreements, real estate documents, estate planning documents, corporate documents
- Client conferences
- Mediation
- Negotiations
- Public speaking
- Appearances before state agencies

**EDUCATION**

Texas Tech University School of Law; Lubbock, Texas  
 Juris Doctor, May 1983

Stephen F. Austin State University; Nacogdoches, Texas  
 Bachelor of Arts, English/Communications (Journalism), December 1979  
 Cum Laude Graduate  
 Certified by the state of Texas to teach secondary English and journalism  
 Newspaper reporter

Eastfield Community College; Mesquite, Texas  
 Member Phi Theta Kappa, National Honor Fraternity of the Community  
 and Junior College, 1977

## **LILLIAN B. HARDWICK**

2107 BANKS ST.  
HOUSTON, TEXAS 77098  
713/523-2487  
fax 713/523-2497  
lbhardwick@sbcglobal.net

### **Education**

J.D., University of Houston Law School (1989)

33 hours towards M.S. in Accountancy, University of Houston (1981-1983)

Ph. D., English, University of Texas (1978)

B.A., Political Science, University of Houston (1969)

### **Memberships**

College of the State Bar of Texas, 01/05 to present

Texas Disciplinary Rules of Professional Conduct drafting committee, 02/01 to present; co-chair, 2006-2007; chair, 2007-2008, 2008-2009, 2009-2010

Member of Scribes, The American Society of Writers on Legal Subjects, 04/99 to 12/08

### **Awards**

State Bar Presidential Certificate of Merit, 2007, based on Committee service regarding the Texas Disciplinary Rules of Professional Conduct in 2006-2007

### **Publications**

*Handbook of Texas Lawyer and Judicial Ethics*, book published by West Group yearly, 2002-2009; co-authored with Robert P. Schuwerk; yearly supplementation; parts personally researched and prepared: Texas Rules of Disciplinary Procedure, Texas Code of Judicial Conduct, Proceedings before the Texas Commission on Judicial Conduct, Removal of Judges from Particular Cases in Texas State Court

"Two Steps Forward: Judicial Recusal after *Kniatt*," *Voice for the Defense*, Sept. 2008, at 27-31.

"Classical Persuasion through Grammar and Punctuation," *Journal of Ass'n of Legal Writing Directors*, Fall 2006

"Risk Avoidance & the Disciplinary Rules," co-authored with Bob Bennett, *San Antonio Lawyer*, Sept.-Oct. 2006

"Proceedings before the Commission on Judicial Conduct," *Texas Bar Journal*, Feb. 2003

"The SEC's Plain English Rule," *Texas Bar Journal*, Dec. 1998

"Juror Misconduct or Juror Accountability?" *22 Litigation* 1996

"Juror Misconduct," 17 *Litigation* 1991

*Juror Misconduct*, book published by Clark Boardman in late 1988; co-authored with B. Lee Ware, then partner at Vinson & Elkins; supplementation in 1989 and 1990

Ghost-author of a book on trial psychology, published in early 1988, including chapters on analysis of argument and speaking styles

### **Professional Experience**

Expert consultation on Code of Judicial Conduct, proceedings before the Commission on Judicial Conduct, attorney ethical responsibilities, and recusal and disqualification of judges in Texas state court, spring 2003 to present

Of counsel, 09/96 - summer 2004, with Caddell & Chapman; *Branch Davidians* trial preparation; Ford/Firestone mass action litigation regarding accidents occurring in Venezuela and Mexico

Caddell & Conwell (now Caddell & Chapman) (plaintiff's work), 09/93 - 09/96; product liability (polybutylene mass action), medical malpractice, business litigation

Outside counsel (primarily defense work), with Ware Snow Fogel & Jackson and Vinson & Elkins, 11/89 - 09/93; product liability (part of national defense team for Remington Arms Company, firearms manufacturer)

Legal assistant, self-employed, Litigation Support Services, Inc., Houston, 03/83 - 11/89; product liability, toxic tort (Brio litigation)

Instructor, Legal Writing, University of Houston Downtown College, 09/83 - 11/83 (concurrent with legal assistant employment)

Legal assistant, David P. Seikel, P.C., Houston (defense, business litigation), 07/82 - 02/83

Legal assistant, Morris, Campbell & Seikel (p/k/a Morris & Campbell), Houston (defense, business litigation), 05/79 - 06/82

Instructor, English Department, University of Houston Downtown College, 01/81 - 05/81 (concurrent with Morris, Campbell & Seikel employment)

Legal assistant, Vinson & Elkins, Houston, 01/79 - 04/79

Instructor, English Department, University of Texas, Austin, 05/78 - 12/78; Assistant Instructor, English Department, University of Texas, Austin, 1976 - 1978; Teaching Assistant I & II, English Department, University of Texas, Austin, 1974-1976 (these positions carried full teaching duties)

## Legal Seminars, Other Instruction

"The 2009 Proposed Texas Disciplinary Rules of Professional Conduct: How They Differ from the Model Rules & Why," Professional Responsibility classes of Dean Emeritus Jim Alfini, South Texas College of Law, 03/31/10

"The 2009 Proposed Texas Disciplinary Rules of Professional Conduct: How We Got There," *St. Mary's Law Journal* Ninth Annual Symposium on Legal Malpractice and Professional Responsibility, 02/19/10

"Opportunities and Pitfalls for Lawyers on the Internet under Pending Disciplinary Rules," CLE delivered to Hays County Bar Association, 12/11/2009

"Texas Court Judicial Recusal and Disqualification," State Bar of Texas webcast, with Hon. Anne Ashby and Bob Bennett, 12/09/2009

"Opportunities and Pitfalls for Lawyers on the Internet," CLE delivered to San Antonio Trial Lawyers Association, 08/20/2009

"Opportunities and Pitfalls for Lawyers on the Internet," CLE delivered to Pasadena-Baytown Bar Association, 06/11/2009

"Opportunities and Pitfalls for Lawyers on the Internet," CLE delivered to Fort Bend County Bar Association, 04/30/2009

"Opportunities and Pitfalls for Lawyers on the Internet," CLE delivered to Harris County Municipal Justice Bar Association, 03/13/2009

"Opportunities and Pitfalls for Lawyers on the Internet," CLE delivered to Houston Trial Lawyers Association, 01/15/2009

"Attorney Breach of Fiduciary Duty: Why You May Need An Expert," CLEonline.com, 10/2008-present

"The Attorney Disciplinary Process & Standards in Texas: Changed & Changing," Parts I, II & III, CLEonline.com, 03/2007-present

"Judicial Recusal & Disqualification: 8 Simple Rules for Removing Your State Court Judge," CLEonline.com, 02/2007-present

Seminars delivered to various law firms: "Ethics & Compliance Program for Law Firms"

"8 Simple Rules for Removing Your State Court Judge," given as seminar to Caddell & Chapman, 08/17/2005

"An Analytical Look at the New Rules of Grievance Procedure," *Grievance Procedures in Texas*, Lorman Education, 11/30/04, Houston, Texas

"Judiciary and the Media," West audio CLE, Spring 2003



Professional Responsibility, 01/03, University of Houston Law Center (first month of course regularly taught by Robert Schuwerk)

"Municipal Courts, Ethics & The Media," 08/21/02, Dallas, Texas

"Municipal Courts, Ethics & The Media," 08/27/02, Houston, Texas

**Kennon L. Peterson**  
Rules Attorney, Supreme Court of Texas  
P.O. Box 12248  
Austin, TX 78711

phone: (512) 463.1353  
kennon.peterson@courts.state.tx.us

## BACKGROUND, EDUCATION, AND PRACTICE

As Rules Attorney for the Supreme Court of Texas, Kennon Peterson assists the Court with promulgating and amending Texas rules of administration, practice, procedure, and evidence. She also works with boards, committees, task forces, and other entities that draft and submit proposed rules and amendments for the Court's review and approval. Finally, she responds to public inquiries regarding local and statewide rules in Texas.

Ms. Peterson obtained a B.A. degree with highest honors in psychology, with a concentration in business, from the University of Texas at Austin in 1999. She managed a small business and taught grade school in Costa Rica before attending the University of Texas School of Law in 2001. She received her J.D. degree with honors in 2004. Ms. Peterson was a Teaching Quizmaster (TQ) during her second and third year of law school. As a TQ, she taught legal-research classes to first-year law students and critiqued papers the students wrote for their Legal Research and Writing courses. During her third year of law school, she became the Head TQ and interned for Justice Mack Kidd of the Third Court of Appeals. After graduating from law school, she clerked for Chief Justice Wallace B. Jefferson of the Supreme Court of Texas. In 2005, she became an associate at Baker Botts (in Austin), where she worked primarily on civil litigation and appellate matters in state and federal courts throughout Texas. She also worked on amicus briefs filed in the Supreme Court of the United States. She became the Rules Attorney for the Supreme Court of Texas in July 2008.

Ms. Peterson is a member of the State Bar of Texas, Austin Bar Association, and the Austin Young Lawyers Association (AYLA). As Rules Attorney, she has assisted the Court with amending several State Bar Rules, including the Texas Disciplinary Rules of Professional Conduct. Outside of her work-related involvement with the State Bar, she has been on the editorial board for *The Advocate* — a State Bar Litigation Section Report — since 2008. Ms. Peterson is also actively involved with her local bar associations. She has been on the AYLA board of directors since 2007 and has been an AYLA officer since 2009. She served on the Austin Bar Association's Legal Build Committee on two occasions and is currently serving on the Civil Appellate Section Council.

**Proposed Amendments to the Texas Disciplinary Rules of Professional Conduct**  
**~Brief Background and Explanation: Take Two~**  
**April 2010**

**By Kennon L. Peterson**  
*Rules Attorney, Supreme Court of Texas*

On October 20, 2009, in Misc. Docket No. 09-9175, the Supreme Court of Texas proposed amendments to the Texas Disciplinary Rules of Professional Conduct as part of the State Bar's continuing self-governance process. The proposed amendments were the product of extensive debate and careful consideration by the Court, Task Force on the Texas Disciplinary Rules of Professional Conduct, and State Bar Committee on the Texas Disciplinary Rules of Professional Conduct.

The Court invited public comments regarding the proposed amendments and received numerous comments in response. These comments resulted in revisions to the proposed amendments. The Court made additional revisions in response to feedback that it received from other individuals and entities, including the State Bar Discipline Client Attorney Assistance Program Committee, Chief Disciplinary Counsel Linda Acevedo, and State Bar Committee on the Texas Disciplinary Rules of Professional Conduct.

On April 14, 2010, the Court completed a revised version of the proposed amendments to the Texas Disciplinary Rules of Professional Conduct. On April 16, the State Bar Board of Directors received the revised version of the proposed amendments, along with a copy of Misc. Docket No. 09-9175 and a letter from Chief Justice Jefferson to State Bar President Roland Johnson and State Bar President-Elect Terry Tottenham. In his letter, Chief Justice Jefferson requested that the Board of Directors consider the proposed amendments and provide the Court with any recommendations or comments by October 6.

The Court's website contains copies of the following documents:

1. *Original, Proposed Amendments (Misc. Docket No. 09-9175)*  
<http://www.supreme.courts.state.tx.us/MiscDocket/09/09917500.pdf>;
2. *Redlined Version of Original, Proposed Amendments*  
<http://www.supreme.courts.state.tx.us/MiscDocket/09/09917501.pdf>;
3. *Clean, Revised Version of Proposed Amendments*  
<http://www.supreme.courts.state.tx.us/rules/pdf/TDRPCAmendments-041410.pdf>;  
and
4. *Redlined, Revised Version of Proposed Amendments*  
<http://www.supreme.courts.state.tx.us/rules/pdf/RedlinedTDRPCAmendments-041410.pdf>.

As noted in the October 2009 version of this document, several goals influenced the content of the proposed amendments. One of the primary goals was to enhance protection of the public. Another goal was to provide better guidance for lawyers dealing with distinct types of clients, such as prospective clients and clients with diminished capacity, and lawyers engaging in certain professional activities, such as law-reform activities and transactions with or relating to clients. Additional goals were to reflect current practices and to clarify disciplinary standards overall in an effort to improve lawyers' compliance with these standards and thereby protect the integrity of the legal profession.

To facilitate comprehension of the proposed amendments (as revised in April 2010), here is a brief overview of some of the most significant changes to the existing rules:

❖ **There are five new rules — Rules 1.00, 1.13, 1.14, 1.17, and 6.03.**

- Rule 1.00 replaces the “Terminology” section and contains definitions of terms that appear in the rules. The following terms are new: affiliated, confirmed in writing, informed consent, personally prohibited, personally represents, reasonably should know (replacing “should know”), represents, writing, and written. The following terms have been revised substantively: firm, fitness, fraud, fraudulent, law firm, partner, substantial, substantially, and tribunal.
- Rule 1.13 addresses prohibited sexual relations between a lawyer and client.
- Rule 1.14 addresses a lawyer’s obligations and options when the lawyer represents a client with diminished capacity. Existing Rule 1.02(g), which touches on the same subject matter, has been deleted.
- Rule 1.17 addresses a lawyer’s obligations relating to a prospective client.
- Rule 6.03 addresses a lawyer’s obligations when the lawyer participates in law-reform activities that may affect the interests of the lawyer’s client.

❖ **Four rules have been renumbered — Rules 1.13, 1.14, 1.15, and 5.08.**

- Rule 1.13 has been renumbered as Rule 6.02.
- Rule 1.14 has been renumbered as Rule 1.15.
- Rule 1.15 has been renumbered as Rule 1.16.
- Rule 5.08 has been renumbered as Rule 5.07, to fill a blank space.

❖ **Several rules contain new or revised scienter standards.**

- As indicated above, the scienter standard “should know” has been changed to “reasonably should know” throughout the rules.
- There are new and revised scienter standards governing the use and disclosure of a client’s confidential information. See Rule 1.05(b)(1)-(2) and (c)(3).

- There are new and revised scienter standards relating to a lawyer’s conflicts of interest. See Rule 1.08(a)(1) and (e)(2) and Rule 1.10(c).
  - Likewise, there are new and revised scienter standards relating to an affiliated lawyer’s imputed conflicts of interest. See Rules 1.06(e); 1.07(c); 1.08(i); 1.09(a)(2), (c)(2), and (e); 1.10(b) and (d); 1.11(c); and 1.17(c).
  - For more examples of new and revised scienter standards, see Rules 1.12(b); 1.14(b)-(c); 1.15(b)(2), (b)(5), and (c); 3.03(b) and (d); 3.04(a); 3.06(f); 3.07(a); 3.08(a)-(b); 5.03(b); and 6.03.
- ❖ **There are enhanced requirements for lawyer-client communications.** See, for example, Rules 1.03(a)(1)-(2); 1.04(c) and (d)(4); 1.07(a)(3); 1.08(a)(2)-(3), (f), and (g)(2)(ii); and 1.15(b)(1).
  - ❖ **The standard governing a lawyer’s representation has changed.** Amended Rule 1.01 requires a lawyer to act with reasonable diligence and promptness in representing a client. Gone from this rule is language providing that a lawyer shall not “frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.”
  - ❖ **The standard governing a lawyer’s fee has changed.** The fee standard in Rule 1.04(a) has changed from “unconscionable” to “clearly excessive.” But the factors that may be considered in determining the reasonableness of a fee have not changed.
  - ❖ **Confidential information is defined differently, and Rule 1.05 is rewritten accordingly.** “Confidential information” is no longer defined in reference to “privileged information” and “unprivileged client information.” There is also a clear differentiation between confidential information of a client or former client versus that of a prospective client. Rule 1.05 has been rewritten to reflect, among other things, the definitional changes and the modified scienter standards addressed above. Paragraph (a) contains the new definition of confidential information, while paragraphs (b) through (d) address the use and disclosure of confidential information.
  - ❖ **Standards governing conflicts of interest are modified in Rules 1.06 through 1.11.**
    - Rule 1.06 begins with a new standard for a lawyer to use when determining whether a conflict of interest exists. This rule then addresses representations a lawyer shall not undertake, even with a client’s informed consent, and representations a lawyer may undertake with a client’s informed consent, despite the existence of a conflict of interest. Of note, the “substantially related matter” standard has been removed from Rule 1.06. The standard for an affiliated lawyer’s imputed conflicts of interest has been modified in paragraph (e) of this rule and is similar to the modified imputation standards in Rules 1.07(c); 1.08(i); 1.09(a)(2), (c)(2), and (e); 1.10(b) and (d); and 1.11(c).

- Rule 1.07 has been rewritten to address a lawyer's obligations relating to the representation of two or more clients (*i.e.*, multiple clients) in the same matter. This rule requires a lawyer to evaluate the situation before undertaking multiple-client representation and reasonably believe that the conditions in subparagraph (a)(2) are met. Also before undertaking the representation, or as soon as practicable thereafter, the lawyer must disclose to the clients all of the things listed in subparagraph (a)(3). Finally, under subparagraph (a)(4), the lawyer must obtain the clients' informed consent, confirmed in writing, to the representation. Paragraph (b), however, allows the lawyer to proceed under standards that differ from these standards if the lawyer represents multiple clients pursuant to a court order or appointment that entails different standards.
- Rule 1.08 has been revised to define more clearly the bounds of prohibited transactions. For example, paragraph (b) prohibits a lawyer from soliciting a substantial gift from a client and contains a modified definition of the relationships that fall within its confines. Paragraph (f) imposes restrictions on aggregate settlements (in civil matters) and aggregated agreements (in criminal matters) and, as indicated above, enhances the disclosures a lawyer must make to a client before executing such a settlement or agreement. Subparagraph (g)(1) now restricts a lawyer's ability to prospectively limit the lawyer's liability to a client not only for malpractice, but also for professional misconduct. Subparagraph (g)(2) sets forth new standards for agreements between lawyers and clients to refer their disputes to binding arbitration. Finally, similar to subparagraph (g)(1), subparagraph (g)(3) restricts a lawyer's ability to settle a claim for professional misconduct, in addition to malpractice.
- Rule 1.09 has been revised substantively and restructured. Paragraphs (a) and (b) restrict a lawyer's ability to represent a person in a matter in which the person's interests are materially adverse to the interests of a former client if the matter is the same as, or substantially related to, a matter in which the lawyer represented the former client. Paragraph (c), in turn, restricts a lawyer's ability to represent a person in a matter adverse to a former client in which the person questions the validity of the lawyer's services or work product for the former client. New to Rule 1.09, paragraph (d) limits explicitly a lawyer's use and disclosure of information relating to the representation of the former client.
- Rule 1.10 contains revised definitions of the terms "matter" (in paragraph (f)) and "private client" (in paragraph (g)) and a new definition of the term "screened" (in paragraph (h)). This rule also contains revised standards for a lawyer who is or has been a public officer or employee. See, for example, paragraphs (c) and (e). Rule 1.10 clarifies further, in paragraphs (a) and (c), when restrictions relate to *personal* representation, as opposed to representation. Finally, subparagraph (b)(2) enhances notice requirements.
- Rule 1.11 has been revised to reflect the revised definition of the term "tribunal" (which impacts the definition of the term "adjudicatory official")

and specifically address third-party neutrals. See paragraphs (a) and (b). This rule also contains the new term “court lawyer,” which is defined in paragraph (d). Similar to Rule 1.10, Rule 1.11(a) has been revised to clarify when restrictions relate to *personal* representation. Also similar to Rule 1.10, subparagraph (c)(2) of this rule contains enhanced notice requirements.

- ❖ **Revised standards govern lawyers who represent organizations.** Rule 1.12 has been restructured and revised substantively to clarify a lawyer’s obligations when representing an organization. For example, the amended rule clarifies the lawyer’s obligation to protect the organization’s best *legal* interests (as the lawyer is retained to protect those interests), modifies the standard for initiating reasonable remedial measures, and addresses the limited situations in which the lawyer may disclose the organization’s confidential information or jointly represent the organization and the organization’s constituent or constituents.
- ❖ **There are also revised standards governing the lawyer’s safekeeping of property.** Renumbered Rule 1.15 has been restructured and revised substantively to clarify the obligations of a lawyer who holds the property of others. For example, the amended rule differentiates between the lawyer’s obligations to a client versus a third person, clarifies the lawyer’s obligations when there is a dispute regarding the property, and addresses when the lawyer may withdraw fees and expenses from a client trust account and when the lawyer may deposit the lawyer’s own funds into the account.
- ❖ **Aspects of a lawyer’s obligation of candor toward a tribunal have changed.** Rule 3.03 has been restructured and revised substantively to clarify a lawyer’s obligation of candor toward a tribunal. The amended rule refines the description of the lawyer’s obligation relating to criminal or fraudulent conduct and expands the description of the lawyer’s obligation relating to the offer or use of false, material evidence. With an exception for criminal matters, this rule also permits the lawyer to refuse to offer or use evidence that the lawyer reasonably believes, but does not know, is false.
- ❖ **There are new and revised standards governing trial publicity.** Rule 3.07 has undergone significant revisions. Existing paragraphs (b) and (c), which contain examples of what may or may not violate paragraph (a), have been deleted. The content of those paragraphs will be in comments. There is a new paragraph (b), which addresses permissible conduct, and a new paragraph (c), which addresses imputation.
- ❖ **Rules specify managerial and supervisory lawyers’ duties.** Rules 5.01 and 5.03 have been revised to reflect duties imposed on lawyers with managerial or supervisory authority, rather than duties imposed on partners who do not always have this authority. In addition, the amended rules clarify that a lawyer is not expected to take reasonable remedial action beyond the scope of the lawyer’s authority. Rule 5.03 has also been restructured to better guide lawyers who are managing or supervising nonlawyers who are employed by, retained by, or affiliated with a lawyer or law firm.

- ❖ **A lawyer has a clear duty to represent a person upon being appointed to do so.** Paragraph (a) has been added to Rule 6.01 to clarify that when a tribunal appoints a lawyer to represent a person, the lawyer is obligated to represent the person until the representation is terminated in accordance with Rule 1.16(c).
  
- ❖ **A lawyer must report certain findings of guilt and deferred-adjudication orders.** Under new paragraph (f) of Rule 8.03, a lawyer is obligated to report to the Office of the Chief Disciplinary Counsel a finding of guilt or an order deferring adjudication by any court for the commission of an Intentional or Serious Crime, as defined by the Texas Rules of Disciplinary Procedure. Regardless of whether the lawyer appeals the finding or order, the lawyer must report within thirty days of the finding or order.

\* \* \* \* \*

*This article contains a summary of the proposed amendments to the Texas Disciplinary Rules of Professional Conduct that the Court's Rules Attorney deemed most significant. Reasonable minds may differ on the amendments she has deemed significant, as well as her characterization of the amendments. This article does not represent the views or opinions of the Court or any of its members. The Court encourages each member of the State Bar of Texas to analyze the proposed amendments and make independent determinations, as each member will ultimately be able to vote on the content of the rules.*



<p><b>Proposed Amendments to Texas Disciplinary Rules of Professional Conduct</b>  <b>Date: April 14, 2010</b></p>
------------------------------------------------------------------------------------------------------------------------

**TABLE OF CONTENTS**

	<b>Page</b>
<b>Terminology</b>	
Rule 1.00. Terminology .....	1
<b>Section I. Client-Lawyer Relationship</b>	
Rule 1.01. Competent and Diligent Representation .....	3
Rule 1.02. Scope of Representation and Allocation of Authority .....	4
Rule 1.03. Communication .....	5
Rule 1.04. Fees .....	5
Rule 1.05. Confidentiality .....	7
Rule 1.06. Conflicts of Interest .....	8
Rule 1.07. Conflicts of Interest: Multiple Clients in the Same Matter .....	9
Rule 1.08. Conflicts of Interest: Prohibited Transactions .....	10
Rule 1.09. Conflicts of Interest: Former Client .....	13
Rule 1.10. Special Conflicts of Interest: Former and Current Government Officers and Employees .....	14
Rule 1.11. Special Conflicts of Interest: Adjudicatory Officials, Third-Party Neutrals, and Court Lawyers .....	16
Rule 1.12. Organization as a Client .....	17
Rule 1.13. Prohibited Sexual Relations .....	18
Rule 1.14. Diminished Capacity .....	18
Rule 1.15. Safekeeping Property .....	19
Rule 1.16. Declining or Terminating Representation .....	20
Rule 1.17. Prospective Clients .....	21
<b>Section II. Counselor</b>	
Rule 2.01. Advisor .....	22
Rule 2.02. Evaluation for Use by Third Persons .....	22
<b>Section III. Advocate</b>	
Rule 3.01. Meritorious Claims and Contentions .....	22
Rule 3.02. Minimizing the Burdens and Delays of Litigation .....	22
Rule 3.03. Candor Toward a Tribunal .....	23
Rule 3.04. Fairness in Adjudicatory Proceedings .....	24
Rule 3.05. Maintaining the Impartiality of a Tribunal .....	25

Rule 3.06.	Maintaining the Integrity of the Jury System . . . . .	25
Rule 3.07.	Trial Publicity . . . . .	26
Rule 3.08.	Lawyer as a Witness . . . . .	26
Rule 3.09.	Special Responsibilities of a Prosecutor . . . . .	27
Rule 3.10.	Advocate in Nonadjudicatory Proceedings . . . . .	28
<b>Section IV.</b>	<b>Non-Client Relationship</b>	
Rule 4.01.	Truthfulness in Statements to Others . . . . .	28
Rule 4.02.	Communication with One Represented by Counsel . . . . .	28
Rule 4.03.	Dealing With an Unrepresented Person . . . . .	29
Rule 4.04.	Respect for Rights of a Third Person . . . . .	29
<b>Section V.</b>	<b>Law Firms and Associations</b>	
Rule 5.01.	Responsibilities of a Managerial or Supervisory Lawyer . . . . .	30
Rule 5.02.	Responsibilities of a Supervised Lawyer . . . . .	30
Rule 5.03.	Responsibilities Regarding Nonlawyers . . . . .	30
Rule 5.04.	Professional Independence of a Lawyer . . . . .	31
Rule 5.05.	Unauthorized Practice of Law . . . . .	32
Rule 5.06.	Restrictions on Right to Practice . . . . .	32
Rule 5.07.	Prohibited Discriminatory Activities . . . . .	32
<b>Section VI.</b>	<b>Public Service</b>	
Rule 6.01.	Appointments by a Tribunal . . . . .	33
Rule 6.02.	Membership in Legal Services Organization . . . . .	33
Rule 6.03.	Law Reform Activities Affecting Client Interests . . . . .	34
<b>Section VII.</b>	<b>Information About Legal Services</b>	
Rule 7.01.	Firm Names and Letterhead . . . . .	34
Rule 7.02.	Communications Concerning a Lawyer's Services . . . . .	35
Rule 7.03.	Prohibited Solicitations and Payments . . . . .	36
Rule 7.04.	Advertisements in the Public Media . . . . .	37
Rule 7.05.	Prohibited Written, Electronic, or Digital Solicitations . . . . .	41
Rule 7.06.	Prohibited Employment . . . . .	43
Rule 7.07.	Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations . . . . .	43
<b>Section VIII.</b>	<b>Maintaining the Integrity of the Profession</b>	
Rule 8.01.	Bar Admission, Reinstatement, and Disciplinary Matters . . . . .	47
Rule 8.02.	Judicial and Legal Officials . . . . .	47

Rule 8.03.	Reporting Professional Misconduct .....	48
Rule 8.04.	Misconduct .....	49
Rule 8.05.	Jurisdiction .....	50
<b>Section IX.</b>	<b>Severability of Rules</b>	
Rule 9.01.	Severability .....	50

## PROPOSED RULES

### **Rule 1.00. Terminology**

The following definitions apply to all Texas Disciplinary Rules of Professional Conduct unless the context in which the word or phrase is used requires a different definition.

- (a) “Adjudicatory official” denotes a person who serves on a Tribunal.
- (b) “Adjudicatory proceeding” denotes the consideration of a matter by a Tribunal.
- (c) “Affiliated”:
  - (1) A lawyer is “affiliated” with a firm if either the lawyer or the lawyer’s professional entity:
    - (i) is a shareholder, partner, member, associate, or employee of that firm;
    - (ii) has any other relationship with that firm, regardless of the title given to it, that provides the lawyer with access to the confidences of the firm’s clients that is comparable to that typically afforded to lawyers in category (i); or
    - (iii) is held out as being in category (i) or (ii).
  - (2) A lawyer is “affiliated” with another lawyer if either the lawyers or their professional entities have any of the relationships described in categories (i) - (iii) above.
- (d) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.
- (e) “Competent” or “competence” denotes possession of or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.
- (f) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is provided in writing by the person, or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. If it is not reasonable for the lawyer to obtain or transmit the writing at the time the person provides informed consent, then the lawyer must obtain or transmit it within a reasonable time after the person provides informed consent.
- (g) “Consult” or “consultation” denotes communication of information and advice reasonably sufficient to permit the client to appreciate the significance of the matter in question.
- (h) “Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or a lawyer or lawyers employed

in the legal department of a corporation, legal services organization, or other organization, or in a government entity.

(i) “Fitness” denotes those qualities of physical and mental health that enable a lawyer to discharge the lawyer’s responsibilities to a client in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or an unreliability in carrying out, significant obligations.

(j) “Fraud” or “fraudulent,” when used in relation to conduct by a lawyer, denotes an intent to deceive and either:

- (1) a knowing misrepresentation of a material fact; or
- (2) a knowing concealment of a material fact if there is a duty to disclose the material fact.

(k) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has explained, in a manner that a reasonable lawyer would believe sufficient for the person to understand, the material risks of and reasonably available alternatives to the proposed course of conduct.

(l) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

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

(n) “Person” includes a legal entity, as well as an individual.

(o) “Personally prohibited” means a lawyer is prohibited based on the lawyer’s direct knowledge or involvement rather than being prohibited based on the lawyer merely being affiliated with another lawyer.

(p) “Personally represents” and “represents”: A lawyer “personally represents” a client in a matter if the lawyer personally exercises legal skill or judgment on behalf of the client in connection with that matter. A lawyer “represents” a client in a matter if the client is personally represented in that matter by that lawyer or by an affiliated lawyer.

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

(r) “Reasonable belief” or “reasonably believes,” when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(s) “Reasonably should know,” when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(t) “Substantial” or “substantially,” when used in reference to degree or extent, denotes a material matter of clear significance.

(u) “Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, an administrative agency, or another body acting in an adjudicative capacity. A legislative body, an administrative agency, or another body acts in an adjudicative capacity when, after the presentation of evidence or legal argument by a party or parties, one or more neutral officials will render a proposal for decision or a binding legal order or decision directly affecting a party’s or parties’ interests in a particular matter.

(v) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and e-mail. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

## **Section I. Client-Lawyer Relationship**

### **Rule 1.01. Competent and Diligent Representation**

(a) A lawyer shall not accept or continue employment in a legal matter that the lawyer knows or reasonably should know is beyond the lawyer’s competence, unless:

- (1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
- (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that reasonably necessary in the circumstances.

(b) In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer but shall act with reasonable diligence and promptness.

(c) As used in this Rule, “neglect” signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

Terminology: See Rule 1.00 for the definitions of “competence,” “competent,” “informed consent,” “knows,” “reasonable,” “reasonably,” “reasonably should know,” and “represents.”

### **Rule 1.02. Scope of Representation and Allocation of Authority**

- (a) Subject to (b) through (f) and Rule 1.14, a lawyer shall abide by a client’s decisions:
- (1) concerning the objectives and general methods of representation;
  - (2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law;
  - (3) in a criminal case, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.
- (b) A lawyer may limit the scope, objectives, and general methods of the representation if the client provides informed consent and the limitation is reasonable under the circumstances.
- (c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning, or application of the law.
- (d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.
- (e) When a lawyer has confidential information clearly establishing that the lawyer’s client has committed a criminal or fraudulent act in the commission of which the lawyer’s services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.
- (f) When a lawyer knows that a client expects representation not permitted by law or these Rules, the lawyer shall consult with the client regarding the relevant limitations on the lawyer’s conduct.

Terminology: See Rule 1.00 for the definitions of “consult,” “consultation,” “informed consent,” “knows,” “reasonable,” “represents,” and “substantial.”

### **Rule 1.03. Communication**

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter; and
- (4) promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Terminology: See Rule 1.00 for the definitions of "consult," "informed consent," "reasonably," and "represents."

### **Rule 1.04. Fees**

(a) A lawyer shall not enter into an arrangement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a reasonable lawyer would be left with a firm belief or conviction that the fee is in excess of a reasonable fee.

(b) Factors that may be considered in determining the reasonableness of a fee include, but are not limited to, the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.



(c) The scope of the representation and the basis or rate of the fee and expenses shall be communicated to the client before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any change in the basis or rate of the fee or expense shall also be communicated to the client.

(d) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or (f). A contingent fee agreement shall:

- (1) be in writing, and signed by the client;
- (2) state the method by which the fee is to be determined, including if there is to be a differentiation in the percentage or percentages that will accrue to the lawyer in the event of settlement, trial, or appeal, and the percentage for each;
- (3) state the litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated; and
- (4) inform the client of the litigation and other expenses for which the client will be liable whether or not the client is the prevailing party.

(e) Upon conclusion of a contingent-fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(f) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

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

- (1) the division is:
  - (i) in proportion to the professional services performed by each lawyer; or
  - (ii) made between lawyers who assume joint responsibility for the representation;
- (2) the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including:
  - (i) the identity of all lawyers or law firms who will participate in the fee-sharing arrangement;
  - (ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation; and
  - (iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and
- (3) the aggregate fee does not violate (a).

(h) Every agreement that allows a lawyer or law firm to associate other counsel in the representation of a person, or to refer the person to other counsel for such representation, and that results in such an association with or referral to a different law firm or a lawyer in such a different firm, shall be confirmed by an arrangement conforming to (g). Consent by a client or a prospective client without knowledge of the information specified in (g)(2) does not constitute a confirmation within the meaning of this Rule. No lawyer shall collect or seek to collect a fee or expense in connection with any such agreement that is not confirmed in that way, except for:

- (1) the reasonable value of legal services provided to that person; and
- (2) the reasonable and necessary expenses actually incurred on behalf of that person.

(i) Paragraph (g) does not apply to payment made to a former partner or associate pursuant to a separation or retirement agreement, or to payment made to a lawyer referral program in accordance with law.

Terminology: See Rule 1.00 for the definitions of “belief,” “firm,” “law firm,” “person,” “reasonable,” “represent,” “writing,” and “written.”

### **Rule 1.05. Confidentiality**

(a) Confidential information:

- (1) in the case of a client or former client, is all information relating to representation of the client from whatever source, whether acquired by the lawyer personally or through an agent, other than information that is or becomes generally known or is readily obtainable from sources generally available to the public; and
- (2) in the case of a prospective client, as described in Rule 1.17, is information furnished to the lawyer by that prospective client in the course of seeking legal representation, other than information that:

- (i) is or becomes generally known or is readily obtainable from sources generally available to the public; or
- (ii) is furnished under the circumstances described in Rule 1.17(d)(2).

(b) Except as permitted by (c) or Rule 1.14, or required by (d), a lawyer shall not knowingly:

- (1) disclose information the lawyer knows or reasonably should know is confidential; or
- (2) use information the lawyer knows or reasonably should know is confidential to the disadvantage of a client, former client, or prospective client.

(c) A lawyer may disclose or use confidential information to the extent reasonably necessary:

- (1) when the client, former client, or prospective client permits the lawyer to do so or provides informed consent to do so;

- (2) except when otherwise instructed, when communicating with:
  - (i) representatives of the client, former client, or prospective client;
  - (ii) any affiliated lawyer or employees of the lawyer or affiliated lawyer; or
  - (iii) any persons who are required to be supervised in accordance with the requirements of Rule 5.03;
- (3) when the lawyer reasonably believes it is necessary:
  - (i) to comply with a court order, law, or these Rules;
  - (ii) to prevent the client, former client, or prospective client from committing a criminal or fraudulent act;
  - (iii) to rectify the consequences of a client or former client's criminal or fraudulent act in the commission of which the lawyer's services had been used;
  - (iv) to prevent reasonably certain death or substantial bodily harm;
  - (v) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, former client, or prospective client;
  - (vi) to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client, former client, or prospective client was involved;
  - (vii) to respond to allegations in any proceeding concerning the lawyer's representation of the client or former client or discussion with a prospective client;
  - or
  - (viii) to carry out the representation effectively, except when otherwise instructed by the client; or
- (4) when the lawyer seeks legal advice about the lawyer's compliance with these Rules.

(d) A lawyer shall disclose confidential information:

- (1) when a lawyer has information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person, to the extent disclosure reasonably appears necessary to prevent the client from committing the criminal or fraudulent act; or
- (2) when required to do so by Rule 3.03(c)-(e) or 4.01(b).

Terminology: See Rule 1.00 for the definitions of "affiliated," "informed consent," "knowingly," "known," "knows," "person," "reasonably," "reasonably believes," "reasonably should know," "represents," and "substantial."

**Rule 1.06. Conflicts of Interest**

(a) A conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

(b) A lawyer shall not, even with informed consent, represent opposing parties in the same matter before a tribunal.

(c) In situations other than the situation described in (b), when representation of a client will involve a conflict of interest the lawyer may represent the client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to the client;
- (2) the representation complies with Rule 1.07; and
- (3) the client provides informed consent, confirmed in writing.

(d) If a lawyer has accepted representation in violation of this Rule, or if a representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.

(e) When a lawyer is personally prohibited by this Rule from representing a person in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that person in that matter, unless the prohibition is based only on a personal interest of the personally prohibited lawyer and the affiliated lawyer reasonably believes that the affiliated lawyer will be able to provide competent and diligent representation.

Terminology: See Rule 1.00 for the definitions of "affiliated," "competent," "confirmed in writing," "informed consent," "knows," "person," "personally prohibited," "reasonably believes," "reasonably should know," "represents," "tribunal," and "writing."

#### **Rule 1.07. Conflicts of Interest: Multiple Clients in the Same Matter**

(a) A lawyer shall not represent two or more clients in a matter unless:

- (1) the representation complies with Rule 1.06;
- (2) the lawyer reasonably believes that:
  - (i) the clients can agree among themselves to a resolution of any material issue concerning the matter;
  - (ii) each client is capable of understanding what is in that client's best interest and making informed decisions;
  - (iii) the lawyer can deal impartially with each of the clients; and

- (iv) the representation is unlikely to result in material prejudice to the interests of any of the clients;
- (3) prior to undertaking the representation or as soon as practicable thereafter the lawyer discloses to the clients that during the representation the lawyer:
  - (i) must act impartially as to all clients; and
  - (ii) cannot serve as an advocate for one client in the matter against any of the other clients, as a consequence of which:
    - (A) each client must be willing to make independent decisions without the lawyer's advice to resolve issues that arise among the clients concerning the matter; and
    - (B) events might occur during joint representation that could require the lawyer to withdraw from representing any or all of the clients before the matter is completed; and
- (4) after making the determinations required by (a)(1) and (a)(2), and as soon as reasonably practicable after making the disclosures required by (a)(3), the lawyer obtains each client's informed consent, confirmed in writing, to the representation.

(b) When a lawyer represents multiple clients in a matter pursuant to a court order or appointment, and the court requires or permits the lawyer to conduct the representation in accordance with standards that differ from those set out in this Rule, the lawyer may comply with those different standards notwithstanding this Rule.

(c) When a lawyer is personally prohibited by this Rule from representing a person in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that person in that matter.

Terminology: See Rule 1.00 for the definitions of "affiliated," "confirmed in writing," "informed consent," "knows," "person," "personally prohibited," "reasonably," "reasonably believes," "reasonably should know," "represents," and "writing."

#### **Rule 1.08. Conflicts of Interest: Prohibited Transactions**

(a) A lawyer shall not enter into a business transaction with a client, other than a standard commercial transaction between the lawyer and the client for products or services that the client generally markets to others, unless:

- (1) the lawyer reasonably believes that the terms of the transaction between the lawyer and the client:
  - (i) are fair and reasonable to the client; and

- (ii) if known to the lawyer and not known to the client, are fully disclosed in a manner that can be reasonably understood by the client;
- (2) the lawyer advises the client of the desirability of seeking, and gives the client a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and
- (3) the client provides informed consent, confirmed in a writing signed by the client, to the material terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall neither prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, nor solicit any substantial gift from a client for the lawyer or for a person related to the lawyer, unless the lawyer or other person is related to the client. For the purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, and other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(c) Before the conclusion of all aspects of the matter giving rise to a lawyer's employment, a lawyer shall not make or negotiate an agreement with a client, prospective client, or former client, or anyone acting on that person's behalf, that gives the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(d) A lawyer shall not provide financial assistance to a client in connection with contemplated or pending proceedings before a tribunal, except that:

- (1) a lawyer may advance or guarantee the costs and expenses of such proceedings, and reasonably necessary medical and living expenses, the repayment of which may be contingent on the outcome of the matter; and
- (2) a lawyer representing an indigent client may pay costs and expenses of such proceedings on behalf of the client.

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

- (1) the client provides informed consent;
- (2) the lawyer reasonably believes that the lawyer's exercise of independent professional judgment on behalf of the client will not be affected; and
- (3) information relating to representation of the client is protected as required by Rule 1.05.

(f) Except as otherwise authorized by law, a lawyer who represents two or more clients shall not make an aggregate settlement of the claims of or against that lawyer's clients, or in a criminal case

an aggregated agreement to guilty or nolo contendere pleas, unless the lawyer obtains the informed consent of each client, confirmed in writing, after advising each client of:

- (1) the total amount of the settlement or result of the agreement;
- (2) the existence and nature of material claims, defenses, or pleas involved;
- (3) the nature and extent of each client's participation in the settlement or agreement, whether by contribution to payment, share of receipts, or resolution of criminal charges;
- (4) the total fees, costs, and expenses to be paid to the lawyer from the proceeds, or by an opposing party or parties; and
- (5) the method by which the costs and expenses are to be apportioned to each client.

(g) A lawyer shall not:

- (1) make an agreement with a client prospectively limiting the lawyer's liability to a client for malpractice or professional misconduct unless the client is represented by independent legal counsel in making the agreement;
- (2) make an agreement with a client that requires a dispute between the lawyer and client to be referred to binding arbitration unless either:
  - (i) the client is represented by independent legal counsel in making the agreement;  
or
  - (ii) the lawyer discloses to the client, in a manner that can reasonably be understood by the client, the scope of the issues to be arbitrated, the fact that the client will waive a trial before a judge or jury on these issues, and that the rights of appeal may be limited; or
- (3) settle a claim or potential claim for malpractice or other professional misconduct with a client or former client of the lawyer not represented by independent legal counsel with respect to that claim unless the lawyer advises that person in writing of the desirability of seeking, and gives a reasonable opportunity to seek, the advice of independent legal counsel in connection therewith.

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

- (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
- (2) contract in a civil case with a client for a contingent fee that is permissible under Rule 1.04.

(i) When a lawyer is personally prohibited by this Rule from engaging in particular conduct, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall engage in that conduct.

Terminology: See Rule 1.00 for the definitions of “affiliated,” “confirmed in writing,” “informed consent,” “known,” “knows,” “person,” “personally prohibited,” “reasonable,” “reasonably,” “reasonably believes,” “reasonably should know,” “represents,” “substantial,” “tribunal,” and “writing.”

**Rule 1.09. Conflicts of Interest: Former Client**

- (a) Unless the former client provides informed consent, confirmed in writing:
  - (1) a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client; and
  - (2) if a lawyer personally prohibited by (a)(1) has left the firm with which the lawyer was affiliated at the time the lawyer personally represented the former client, no lawyer who is presently affiliated with that firm, and who knows or reasonably should know of the prohibition, shall represent another person in the same or a substantially related matter in which the formerly affiliated lawyer represented the client if any lawyer remaining in the firm has information protected by Rule 1.05 or 1.09(d) that is material to the matter.
  
- (b) Unless the former client provides informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was affiliated previously represented a client:
  - (1) whose interests are materially adverse to the interests of that person; and
  - (2) about whom the lawyer acquired information protected by Rule 1.05 or 1.09(d) that is material to the matter.
  
- (c) Unless the former client provides informed consent, confirmed in writing:
  - (1) a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client in which such other person questions the validity of the lawyer’s services or work product for the former client; and
  - (2) if a lawyer personally prohibited by (c)(1) has left the firm with which the lawyer was affiliated at the time the lawyer provided the services or work product to the former client, no lawyer who is presently affiliated with that firm, and who knows or reasonably should know of the prohibition, shall represent a person in a matter that requires a challenge to the formerly affiliated lawyer’s services or work product for the former client.
  
- (d) A lawyer who personally has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:



- (1) use information relating to the representation to the disadvantage of the former client except as these Rules provide, or when the information is or becomes generally known or is readily obtainable from sources generally available to the public; or
- (2) disclose information relating to the representation except as these Rules provide.

(e) When a lawyer is personally prohibited by this Rule from representing a person in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that person in that matter.

Terminology: See Rule 1.00 for the definitions of “affiliated,” “confirmed in writing,” “firm,” “informed consent,” “knowingly,” “known,” “knows,” “person,” “personally prohibited,” “personally represents,” “reasonably should know,” “represents,” and “writing.”

**Rule 1.10. Special Conflicts of Interest: Former and Current Government Officers and Employees**

(a) Except as law may otherwise expressly permit, a lawyer shall not personally represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government entity provides informed consent, confirmed in writing, to the representation.

(b) When a lawyer is personally prohibited by (a) from representing a private client in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that private client in that matter unless:

- (1) the personally prohibited lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
- (2) written notice is promptly given to the appropriate government entity disclosing the affiliation of the personally prohibited lawyer and the screening measures adopted to ensure compliance with this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee shall not personally represent a private client whose interests are adverse to that person in a matter in which the lawyer knows or reasonably should know the information could be used to the material disadvantage of that person. As used in this Rule, the term “confidential government information” means information that has been obtained under government authority and that, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and that is not otherwise available to the public.

(d) When a lawyer is personally prohibited by (c) from representing a private client in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that private client in that matter unless the personally prohibited lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(e) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee shall not:

- (1) participate in a matter involving a former private client if doing so would violate Rule 1.09;
- (2) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government entity provides informed consent, confirmed in writing; or
- (3) negotiate for private employment with any person who is involved as a party or as a lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a court lawyer to an adjudicatory official may negotiate for private employment in accordance with Rule 1.11.

(f) As used in this Rule, the term “matter” includes:

- (1) any adjudicatory proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other comparable particular action or transaction involving a specific party or parties, but not regulation-making or rule-making proceedings or assignments; and
- (2) any other action or transaction covered by conflict of interest statutes or by conflict of interest rules of the appropriate government entity.

(g) As used in this Rule, the term “private client” means any person, including a government entity, who is represented by the lawyer when the lawyer is engaged in the private practice of law.

(h) As used in this Rule, the term “screened” means that the law firm:

- (1) has instituted measures adequate to prevent participation of the personally prohibited lawyer in the matter and to protect from disclosure information that the personally prohibited lawyer is obligated to protect under applicable law or these Rules; and
- (2) can demonstrate that the personally prohibited lawyer did not disclose the information described in (h)(1) before the law firm implemented the screening measures described in (h)(1).

Terminology: See Rule 1.00 for the definitions of “adjudicatory official,” “adjudicatory proceeding,” “affiliated,” “confirmed in writing,” “informed consent,” “knows,” “law firm,” “person,” “personally

prohibited,” “personally represents,” “reasonably should know,” “represents,” “substantially,” “writing,” and “written.”

**Rule 1.11. Special Conflicts of Interest: Adjudicatory Officials, Third-Party Neutrals, and Court Lawyers**

(a) A lawyer shall not personally represent a person in connection with a matter in which the lawyer participated personally and substantially as an adjudicatory official or a court lawyer to an adjudicatory official, or as a third-party neutral in a nonbinding proceeding, unless all parties to the proceeding provide informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a pending matter in which the lawyer is participating personally and substantially as an adjudicatory official, or as a third-party neutral in a nonbinding proceeding. A lawyer serving as a court lawyer to an adjudicatory official may negotiate for employment with a party or lawyer involved in a pending matter in which the court lawyer is participating personally and substantially, but only after the court lawyer has notified the adjudicatory official.

(c) When a lawyer is personally prohibited by (a) from representing a person in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that person in that matter unless:

- (1) the personally prohibited lawyer is timely screened from any participation in the matter in accordance with Rule 1.10(h) and is apportioned no part of the fee therefrom; and
- (2) written notice is promptly given to the parties and any appropriate tribunal disclosing the affiliation of the personally prohibited lawyer and the screening measures adopted to ensure compliance with this Rule.

(d) For purposes of this Rule, “court lawyer” includes law clerks, briefing attorneys, and staff attorneys, whether or not assigned to a particular adjudicatory official, as well as persons who were not yet licensed as lawyers at the time they began providing services to a tribunal.

Terminology: See Rule 1.00 for the definitions of “adjudicatory official,” “affiliated,” “confirmed in writing,” “informed consent,” “knows,” “person,” “personally prohibited,” “personally represents,” “reasonably should know,” “represents,” “substantially,” “tribunal,” “writing,” and “written.”

## **Rule 1.12. Organization as a Client**

(a) Notwithstanding that a lawyer reports to and takes direction from an organization's duly authorized constituents, a lawyer employed or retained to provide legal services for an organization represents that organization and shall proceed as reasonably necessary in the best legal interest of that organization at all times, including the situations described in (d).

(b) A lawyer shall explain that the lawyer represents the organization rather than a constituent of the organization when the lawyer knows or reasonably should know the organization's interests are adverse to the interests of that constituent, or when an explanation appears reasonably necessary to avoid misunderstanding on the part of that constituent.

(c) A lawyer shall not jointly represent the organization and a constituent of the organization in a matter unless the joint representation is in conformity with Rule 1.07.

(d) A lawyer who represents an organization shall take reasonable remedial actions whenever the lawyer has information clearly establishing that:

- (1) a constituent of the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law that reasonably may be imputed to the organization;
- (2) the violation is likely to result in substantial injury to the organization; and
- (3) the violation is related to a matter within the scope of the lawyer's representation of the organization.

(e) Unless otherwise required by law or these Rules, reasonable remedial actions may include, but are not limited to, one or more of the following:

- (1) asking for reconsideration of the matter;
- (2) advising that a separate legal opinion on the matter be sought for presentation to an appropriate authority within the organization; and
- (3) referring the matter to a higher authority within the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law.

(f) If, despite the lawyer's initiation of reasonable remedial action, the organization continues to pursue, or fails to address in a timely and appropriate manner, a matter called to its attention by the lawyer pursuant to (d) and (e), then the lawyer may disclose confidential information to the extent permitted by Rule 1.05.

(g) A lawyer who resigns or is terminated from representing an organization shall comply with Rule 1.16. Upon doing so, a lawyer is excused from proceeding further as set out in (d), (e), and (f). Rule 1.05 governs any further obligations regarding confidential information.

Terminology: See Rule 1.00 for the definitions of “knows,” “reasonable,” “reasonably,” “reasonably should know,” “represents,” and “substantial.”

### **Rule 1.13. Prohibited Sexual Relations [new, renumbered]**

(a) A lawyer shall not condition the representation of a client or prospective client, or the quality of such representation, on having any person engage in sexual relations with the lawyer.

(b) A lawyer shall not solicit or accept sexual relations as payment of fees.

(c) A lawyer shall not have sexual relations with a client that the lawyer is personally representing unless the lawyer and client are married to each other, or are engaged in an ongoing consensual sexual relationship that began before the representation.

Terminology: See Rule 1.00 for the definitions of “person,” “personally represents,” and “represents.”

### **Rule 1.14. Diminished Capacity [new, renumbered]**

(a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action. Such action may include, but is not limited to, consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) When taking protective action pursuant to (b), the lawyer may disclose the client’s confidential information to the extent the lawyer reasonably believes is necessary to protect the client’s interests, unless otherwise prohibited by law.

Terminology: See Rule 1.00 for the definitions of “consult,” “reasonably,” “reasonably believes,” “represents,” and “substantial.”

**Rule 1.15. Safekeeping Property [renumbered]**

(a) When, in connection with a representation, a lawyer receives property that belongs in whole or in part to a client or third person, the lawyer shall safeguard the property and hold it in trust separately from the lawyer’s own property. In addition, the lawyer shall:

- (1) deposit any funds into one or more accounts designated as trust accounts, maintained in the state where the lawyer’s office is situated, or elsewhere with the informed consent of the client or third person;
- (2) identify any other property as such and safeguard it appropriately; and
- (3) create and maintain complete records of all trust-account funds and other property and preserve those records for five years after termination of the representation.

(b) Upon receiving the property described in (a), the lawyer shall with reasonable promptness:

- (1) notify the client of the receipt and proposed distribution of such property;
- (2) notify the third person of the receipt of such property the lawyer knows belongs to the third person;
- (3) distribute to the client or third person such property the client or third person is entitled to receive, except as otherwise specifically provided by this Rule or law;
- (4) upon the client’s request or when otherwise specifically required by these Rules, render a full accounting to the client as to such property the lawyer is holding in trust; and
- (5) upon the third person’s request, render an accounting to the third person as to such property the lawyer knows belongs to the third person.

(c) When, in the course of representation, a lawyer possesses property to which the lawyer knows two or more persons, one of whom may be the lawyer, claim a right and a dispute arises concerning their rights, the lawyer shall, unless the lawyer reasonably believes the claim giving rise to the dispute is not valid, retain disputed funds in a trust account and continue to safeguard other property appropriately, deposit disputed funds or other property into the registry of a court, or otherwise safeguard the disputed funds or other property in a manner agreeable to those claiming a right. When the dispute has been resolved, the lawyer shall with reasonable promptness distribute the property in the lawyer’s possession to persons entitled to the property.

(d) A lawyer shall deposit unearned fees and advanced expenses into a client trust account, to be withdrawn by the lawyer only as fees are earned or expenses are incurred.

(e) Notwithstanding (a), a lawyer may deposit the lawyer's own funds into a client trust account for the purpose of paying service charges on that account.

Terminology: See Rule 1.00 for the definitions of "informed consent," "knows," "person," "reasonable," "reasonably believes," and "represents."

### **Rule 1.16. Declining or Terminating Representation [renumbered]**

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

- (1) the representation will result in violation of the law or these Rules;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's fitness to represent the client; or
- (3) the lawyer is discharged.

(b) Except as required by (a), a lawyer shall not withdraw from representing a client unless:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) a client insists upon pursuing an objective or taking action that the lawyer considers repugnant or imprudent or with which the lawyer has fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services, including an obligation to pay the lawyer's fee as agreed, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

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

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payments of fee or expense that has not been earned or incurred. The lawyer

may retain papers relating to the client to the extent permitted by law only if such retention will not prejudice the client in the subject matter of the representation.

Terminology: See Rule 1.00 for the definitions of “fitness,” “reasonable,” “reasonably,” “reasonably believes,” “represents,” “substantially,” and “tribunal.”

### **Rule 1.17. Prospective Clients [new]**

(a) A person who in good faith discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) A lawyer shall not use or disclose confidential information provided by the prospective client, except as provided in Rule 1.05 or (d)(2).

(c) A lawyer who has received confidential information from a prospective client shall not represent a person with interests materially adverse to those of the prospective client in the same or a substantially related matter, except as provided in (d)(1) or (d)(2). When a lawyer is personally prohibited by this paragraph from representing a person in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that person in that matter.

(d) When a lawyer has received confidential information from a prospective client, representation of a client with interests materially adverse to those of the prospective client in the same or a substantially related matter is permissible if:

(1) the prospective client has provided informed consent, confirmed in writing, to the representation; or

(2) the lawyer conditioned the discussion with the prospective client on the prospective client’s informed consent that no information disclosed during the discussion would be confidential or prohibit the lawyer from representing a different client in the matter.

Terminology: See Rule 1.00 for the definitions of “affiliated,” “confirmed in writing,” “informed consent,” “knows,” “person,” “personally prohibited,” “reasonably should know,” “represents,” and “writing.”



## **Section II. Counselor**

### **Rule 2.01. Advisor**

In representing a client, a lawyer shall exercise independent professional judgment and give candid advice.

Terminology: See Rule 1.00 for the definition of “represents.”

### **Rule 2.02. Evaluation for Use by Third Persons**

A lawyer shall not provide an evaluation of a matter affecting a client for the use of someone other than the client unless:

(a) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer’s relationship with the client; and

(b) the client provides informed consent.

Terminology: See Rule 1.00 for the definitions of “informed consent,” “person,” and “reasonably believes.”

## **Section III. Advocate**

### **Rule 3.01. Meritorious Claims and Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes there is a nonfrivolous basis for doing so.

Terminology: See Rule 1.00 for the definition of “reasonably believes.”

### **Rule 3.02. Minimizing the Burdens and Delays of Litigation**

In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

Terminology: See Rule 1.00 for the definition of “reasonably.”

### **Rule 3.03. Candor Toward a Tribunal**

(a) A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;
- (2) fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (4) offer or use evidence that the lawyer knows to be false.

(b) Notwithstanding any other of these Rules, a lawyer may refuse to offer or use evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes, but does not know, is false.

(c) If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered or used material evidence and the lawyer comes to know of its falsity, the lawyer shall make a reasonable effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If those efforts are unsuccessful, the lawyer shall take other reasonable remedial measures, including, if necessary, disclosure of the falsehood to the tribunal.

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

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

(f) The obligations stated in this Rule continue until remedial legal measures are no longer reasonably possible.

Terminology: See Rule 1.00 for the definitions of "adjudicatory proceeding," "knowingly," "known," "knows," "person," "reasonable," "reasonably," "reasonably believes," "represents," and "tribunal."

### **Rule 3.04. Fairness in Adjudicatory Proceedings**

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter, destroy, or conceal a document or other material that a lawyer would reasonably believe has potential or actual evidentiary value; or counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or pay, offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

- (1) expenses reasonably incurred by a witness in attending or testifying;
- (2) reasonable compensation to a witness for loss of time in attending or testifying; and
- (3) a reasonable fee for the professional services of an expert witness;

(c) except as stated in (d), in representing a client before a tribunal:

- (1) habitually violate an established rule of procedure or evidence;
- (2) state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceeding or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness;
- (3) state a personal opinion as to the justness of a cause, credibility of a witness, culpability of a civil litigant, or guilt or innocence of an accused, except that a lawyer may argue the lawyer's analysis of the evidence and other permissible considerations for any position or conclusion with respect to the matters stated in this Rule;
- (4) ask any question intended to degrade a witness or other person except when the lawyer reasonably believes that the question will lead to relevant and admissible evidence; or
- (5) engage in conduct intended to disrupt the proceedings;

(d) knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal, except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience; or

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

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

Terminology: See Rule 1.00 for the definitions of “adjudicatory proceeding,” “knowingly,” “person,” “reasonable,” “reasonably,” “reasonably believes,” “represents,” and “tribunal.”

### **Rule 3.05. Maintaining the Impartiality of a Tribunal**

A lawyer shall not:

(a) seek to influence a tribunal concerning a pending matter by means prohibited by law or applicable rules of practice or procedure;

(b) except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause another to communicate ex parte with a tribunal for the purpose of influencing the tribunal concerning a pending matter other than:

(1) in the course of official proceedings in the cause;

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

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

Terminology: See Rule 1.00 for the definitions of “represents,” “tribunal,” and “writing.”

### **Rule 3.06. Maintaining the Integrity of the Jury System**

(a) A lawyer shall not:

(1) conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a venire member or juror; or

(2) seek to influence a venire member or juror concerning the merits of a pending matter by means prohibited by law or applicable rules of practice or procedure.

(b) Prior to discharge of the jury from further consideration of a matter, a lawyer connected with the matter shall not communicate with or cause another to communicate with anyone the lawyer knows to be a venire member, juror, or alternate juror, except in the course of official proceedings.

(c) During the trial of a case, a lawyer not connected with the case shall not communicate with or cause another to communicate with a juror or alternate juror concerning the matter.

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

(e) All restrictions imposed by this Rule on a lawyer also apply to communications with or investigations of a venire member's or juror's family member.

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

Terminology: See Rule 1.00 for the definition of "knows."

### **Rule 3.07. Trial Publicity**

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

(b) This Rule does not preclude a lawyer from:

- (1) responding to allegations of misconduct made against that lawyer, provided that the lawyer complies with the limitations in (a); or
- (2) making a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this subparagraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(c) No lawyer affiliated in a firm with a lawyer subject to (a) shall make a statement prohibited by (a).

Terminology: See Rule 1.00 for the definitions of "adjudicatory proceeding," "affiliated," "believes," "firm," "knows," "reasonable," "reasonably should know," and "substantial."

### **Rule 3.08. Lawyer as a Witness**

(a) A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or reasonably should know that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client, unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

- (3) the testimony relates to the nature and value of legal services rendered in the case;
- (4) the lawyer is a party to the action and is appearing pro se; or
- (5) the lawyer has promptly notified opposing counsel that the lawyer expects to testify in the adjudicatory proceeding and disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer knows or reasonably should know that the lawyer will be compelled to furnish testimony that will be substantially adverse to the lawyer's client, unless the client provides informed consent.

(c) Without the client's informed consent, a lawyer may not act as an advocate in an adjudicatory proceeding in which another lawyer in the lawyer's firm is prohibited by (a) or (b) from serving as an advocate.

(d) If the lawyer to be called as a witness could not also serve as an advocate under this Rule, that lawyer shall not take an active role before the tribunal in the presentation of the matter.

Terminology: See Rule 1.00 for the definitions of "adjudicatory proceeding," "believes," "firm," "informed consent," "knows," "reasonably should know," "substantial," "substantially," and "tribunal."

### **Rule 3.09. Special Responsibilities of a Prosecutor**

The prosecutor in a criminal case shall:

(a) not prosecute or threaten to prosecute a charge the prosecutor knows is not supported by probable cause;

(b) not conduct or assist in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pre-trial, trial, or post-trial rights;

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

(e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07.

Terminology: See Rule 1.00 for the definitions of “known,” “knows,” “person,” “reasonable,” and “tribunal.”

### **Rule 3.10. Advocate in Nonadjudicatory Proceedings**

A lawyer representing a client before a legislative or administrative body in a nonadjudicatory proceeding shall disclose that the appearance is in a representative capacity and shall conform to Rules 3.04(a) through (d), 3.05(a), and 4.01.

Terminology: See Rule 1.00 for the definitions of “adjudicatory proceeding,” and “represents.”

## **Section IV. Non-Client Relationship**

### **Rule 4.01. Truthfulness in Statements to Others**

In the course of representing a client, a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.

Terminology: See Rule 1.00 for the definitions of “knowingly,” “person,” and “represents.”

### **Rule 4.02. Communication With One Represented by Counsel**

(a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization, or government entity the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(b) In representing a client, a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another lawyer about the subject of the

representation, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

- (c) For the purpose of this Rule, “organization” or “government entity” means a person who:
- (1) has managerial responsibility within an organization or government entity that relates to the subject of the representation; or
  - (2) is employed by such organization or government entity and whose act or omission in connection with the subject of representation may make the organization or government entity vicariously liable for such act or omission.

(d) When a person, organization, or government entity that is represented by a lawyer in a matter seeks advice regarding that matter from another lawyer, the second lawyer is not prohibited by (a) from giving such advice without notifying or seeking consent of the first lawyer.

Terminology: See Rule 1.00 for the definitions of “knows,” “person,” and “represents.”

#### **Rule 4.03. Dealing With an Unrepresented Person**

A lawyer who communicates on behalf of a client with a person who is not represented by counsel shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Terminology: See Rule 1.00 for the definitions of “knows,” “person,” “reasonable,” “reasonably should know,” and “represents.”

#### **Rule 4.04. Respect for Rights of a Third Person**

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to harass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

- (b) A lawyer shall not present, participate in presenting, or threaten to present:
- (1) criminal or disciplinary charges solely to gain an advantage in a civil matter; or
  - (2) civil, criminal, or disciplinary charges against a complainant, witness, or potential witness in a bar disciplinary proceeding solely to prevent participation by the complainant, witness, or potential witness in the bar disciplinary proceeding.

Terminology: See Rule 1.00 for the definitions of “person,” “represents,” and “substantial.”



## **Section V. Law Firms and Associations**

### **Rule 5.01. Responsibilities of a Managerial or Supervisory Lawyer**

A lawyer shall be subject to discipline because of another lawyer's violation of these Rules if the lawyer has managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and that managerial or supervisory lawyer:

- (a) orders, encourages, or knowingly permits the conduct involved; or
- (b) with knowledge of the other lawyer's violation of these Rules, knowingly fails to take reasonable remedial action within the scope of the lawyer's authority to avoid or mitigate the consequences of the other lawyer's violation.

Terminology: See Rule 1.00 for the definitions of "law firm," "knowingly," and "reasonable."

### **Rule 5.02. Responsibilities of a Supervised Lawyer**

- (a) A lawyer is bound by these Rules notwithstanding that the lawyer acted at the direction of another person.
- (b) A supervised lawyer does not violate these Rules if that lawyer acts in accordance with a managerial or supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Terminology: See Rule 1.00 for the definitions of "person" and "reasonable."

### **Rule 5.03. Responsibilities Regarding Nonlawyers**

A lawyer shall be subject to discipline for the conduct of a nonlawyer employed by, retained by, or affiliated with a lawyer or law firm that would be a violation of these Rules if engaged in by a lawyer, if:

- (a) the lawyer has direct supervisory authority over the nonlawyer and fails to make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the lawyer's professional obligations;
- (b) the lawyer orders, encourages, or knowingly permits the conduct involved; or

(c) the lawyer:

- (1) has managerial authority in the law firm that has retained, employed, or affiliated the nonlawyer, or has direct supervisory authority over such nonlawyer; and
- (2) with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action within the scope of the lawyer's authority to avoid or mitigate the consequences of that nonlawyer's misconduct.

Terminology: See Rule 1.00 for the definitions of "affiliated," "knowingly," "law firm," and "reasonable."

#### **Rule 5.04. Professional Independence of a Lawyer**

- (a) A lawyer or law firm shall not share or promise to share legal fees with a nonlawyer, except that:
  - (1) an agreement by a lawyer with the lawyer's firm, partner, or associate, or a lawful court order, may provide for the payment of money, over a reasonable period of time, to the lawyer's estate to or for the benefit of the lawyer's heirs or personal representatives, beneficiaries, or former spouse, after the lawyer's death or as otherwise provided by law or court order;
  - (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;
  - (3) a lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
  - (4) a lawyer may share legal fees with a lawyer referral service in accordance with law.
  
- (b) A lawyer shall not form a firm with a nonlawyer if any activity of the firm consists of the practice of law.
  
- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
  
- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
  - (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
  - (2) a nonlawyer is a corporate director or officer thereof; or
  - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Terminology: See Rule 1.00 for the definitions of “firm,” “law firm,” “partner,” “person,” and “reasonable.”

#### **Rule 5.05. Unauthorized Practice of Law**

A lawyer shall not:

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

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

Terminology: See Rule 1.00 for the definition of “person.”

#### **Rule 5.06. Restrictions on Right to Practice**

A lawyer shall not participate in offering or making:

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

(b) an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a suit or controversy, except that as part of the settlement of a disciplinary proceeding against a lawyer an agreement may be made placing restrictions on the right of that lawyer to practice.

Terminology: See Rule 1.00 for the definition of “firm.”

#### **Rule 5.07. Prohibited Discriminatory Activities [renumbered]**

(a) A lawyer shall not willfully, in connection with an adjudicatory proceeding, except as provided in (b), manifest, by words or conduct, bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation towards any person involved in that proceeding in any capacity.

(b) Paragraph (a) does not apply to a lawyer’s decision whether to represent a particular person in connection with an adjudicatory proceeding, or to the process of jury selection, or to communications protected as “confidential information” under these Rules. See Rule 1.05(a)-(b). It also does not

preclude advocacy in connection with an adjudicatory proceeding involving any of the factors set out in (a) if that advocacy:

- (1) is necessary in order to address any substantive or procedural issues raised by the proceeding; and
- (2) is conducted in conformity with applicable rulings and orders of a tribunal and applicable rules of practice or procedure.

Terminology: See Rule 1.00 for the definitions of “adjudicatory proceeding,” “person,” “represents,” and “tribunal.”

## **Section VI. Public Service**

### **Rule 6.01. Appointments by a Tribunal**

(a) When a tribunal appoints a lawyer to represent a person, the lawyer shall represent the person until the representation is terminated in accordance with Rule 1.16(c).

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

- (1) representing the client is likely to result in violation of law or these Rules;
- (2) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (3) 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.

Terminology: See Rule 1.00 for the definitions of “person,” “reasonable,” “represents,” and “tribunal.”

### **Rule 6.02. Membership in Legal Services Organization [renumbered]**

A lawyer serving as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, shall not knowingly participate in a decision or an action of the organization if:

(a) participating in the decision or action would violate the lawyer’s obligations to a client under Rule 1.06; or

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

Terminology: See Rule 1.00 for the definitions of “knowingly,” “law firm,” and “represents.”

### **Rule 6.03. Law Reform Activities Affecting Client Interests [new]**

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 the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact to the organization but need not identify the client.

Terminology: See Rule 1.00 for the definition of “knows.”

## **Section VII. Information About Legal Services**

### **Rule 7.01. Firm Names and Letterhead**

(a) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain “P.C.,” “P.A.,” “L.L.P.,” “P.L.L.C.,” or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

(b) A firm with offices in more than one jurisdiction may use the same name 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 occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a 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) A lawyer shall not hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates.

(e) A lawyer shall not advertise in the public media or seek professional employment by any communication under a trade or fictitious name, except that a lawyer who practices under a firm

name as authorized by paragraph (a) of this Rule may use that name in such advertisement or communication but only if that name is the firm name that appears on the lawyer's letterhead, business cards, office sign, fee contracts, and with the lawyer's signature on pleadings and other legal documents.

(f) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).

Terminology: See Rule 1.00 for the definitions of "firm," "partner," and "substantial."

### **Rule 7.02. Communications Concerning a Lawyer's Services**

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it:

- (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (2) contains any reference in a public media advertisement to past successes or results obtained unless
  - (i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict,
  - (ii) the amount involved was actually received by the client,
  - (iii) the reference is accompanied by adequate information regarding the nature of the case or matter and the damages or injuries sustained by the client, and
  - (iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well;
- (3) 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 these rules or other law;
- (4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;
- (5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;
- (6) designates one or more specific areas of practice in an advertisement in the public media or in a solicitation communication unless the advertising or soliciting lawyer is competent to handle legal matters in each such area of practice; or
- (7) uses an actor or model to portray a client of the lawyer or law firm.

(b) Rule 7.02(a)(6) does not require that a lawyer be certified by the Texas Board of Legal Specialization at the time of advertising in a specific area of practice, but such certification shall

conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(6) with respect to the area(s) of practice in which such lawyer is certified.

(c) A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04.

(d) Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or solicitation communication with respect to which such required statement or disclaimer relates; provided however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.

Terminology: See Rule 1.00 for the definitions of “competent,” “firm,” “law firm,” and “tribunal.”

### **Rule 7.03. Prohibited Solicitations and Payments**

(a) A lawyer shall not by in-person contact, or by regulated telephone or other electronic contact as defined in paragraph (f), seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer’s advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization’s members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services. In those situations where in-person or telephone or other electronic contact is permitted by this paragraph, a lawyer shall not have such a contact with a prospective client if:

- (1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;
- (2) the communication contains information prohibited by Rule 7.02(a); or
- (3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(c) A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(g) or by paragraph (b) of this Rule.

(d) A lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c).

(e) A lawyer shall not participate with or accept referrals from a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(f) As used in paragraph (a), “regulated telephone or other electronic contact” means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or firm.

Terminology: See Rule 1.00 for the definitions of “firm,” “fraud,” “fraudulent,” “knows,” “person,” “reasonable,” and “reasonably believes.”

#### **Rule 7.04. Advertisements in the Public Media**

(a) A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation “Patents,” “Patent Attorney,” or “Patent Lawyer,” or any combination of those terms. A lawyer engaged in the trademark practice may use the designation “Trademark,” “Trademark Attorney,” or “Trademark Lawyer,” or any combination of those terms. A lawyer engaged in patent and trademark practice may hold himself or herself out as specializing in “Intellectual Property Law,” “Patent, Trademark, Copyright Law and Unfair Competition,” or any of those terms.

(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.

(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain



a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.

(b) A lawyer who advertises in the public media:

(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement; and

(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, “Board Certified, [area of specialization] — Texas Board of Legal Specialization;” and

(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, “Certified [area of specialization] [name of certifying organization],” but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the Bar; and

(3) shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement:

(i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(c) Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously and in language easily understood by an ordinary consumer.

(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory,

newspaper or other periodical, outdoor display, radio, television, the internet, or electronic or digital media.

(e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.

(f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.

(g) In advertisements in the public media, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised.

(h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of contingent fee work are disclosed in such advertisement, it must also disclose whether the percentage is computed before or after expenses are deducted from the recovery.

(i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.

(j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three days a week; or

(2) the advertisement states:

(i) the days and times during which a lawyer will be present at that office, or

(ii) that meetings with lawyers will be by appointment only.

(k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing

lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.

(m) No motto, slogan or jingle that is false or misleading may be used in any advertisement in the public media.

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:

- (1) states that the advertisement is paid for by the cooperating lawyers;
- (2) names each of the cooperating lawyers;
- (3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;
- (4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and
- (5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:

- (1) ensuring that each advertisement does not violate this Rule; and
- (2) complying with the filing requirements of Rule 7.07.

(q) If these rules require that specific qualifications, disclaimers, or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers, or disclosures must be presented in the same manner as the communication and with equal prominence.

(r) A lawyer who advertises on the internet must display the statements and disclosures required by Rule 7.04.

Terminology: See Rule 1.00 for the definitions of “competence,” “firm,” “law firm,” “knows,” “person,” “reasonably,” “reasonably believes,” “writing,” and “written.”

### **Rule 7.05. Prohibited Written, Electronic, or Digital Solicitations**

(a) A lawyer shall not send, deliver, or transmit, or knowingly permit or knowingly cause another person to send, deliver, or transmit, a written, audio, audiovisual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment on behalf of any lawyer or law firm if:

- (1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;
- (2) the communication contains information prohibited by Rule 7.02 or fails to satisfy each of the requirements of Rule 7.04(a) through (c), and (g) through (q) that would be applicable to the communication if it were an advertisement in the public media; or
- (3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) Except as provided in paragraph (f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:

- (1) shall, in the case of a non-electronically transmitted written communication, be plainly marked “ADVERTISEMENT” on its first page, and on the face of the envelope or other packaging used to transmit the communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the word “ADVERTISEMENT” shall be:
  - (i) in a color that contrasts sharply with the background color; and
  - (ii) in a size of at least 3/8" vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger;
- (2) shall, in the case of an electronic mail message, be plainly marked “ADVERTISEMENT” in the subject portion of the electronic mail and at the beginning of the message’s text;
- (3) shall not be made to resemble legal pleadings or other legal documents;
- (4) shall not reveal on the envelope or other packaging or electronic mail subject line used to transmit the communication, or on the outside of a self-mailing brochure or pamphlet, the nature of the legal problem of the prospective client or non-client; and
- (5) shall disclose how the lawyer obtained the information prompting the communication to solicit professional employment if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s).

(c) Except as provided in paragraph (f) of this Rule, an audio, audio-visual, digital media, recorded telephone message, or other electronic communication sent to prospective clients for the purpose of obtaining professional employment:

- (1) shall, in the case of any such communication delivered to the recipient by non-electronic means, plainly and conspicuously state in writing on the outside of any envelope or other packaging used to transmit the communication, that it is an “ADVERTISEMENT”;
- (2) shall not reveal on any such envelope or other packaging the nature of the legal problem of the prospective client or non-client;
- (3) shall disclose, either in the communication itself or in accompanying transmittal message, how the lawyer obtained the information prompting such audio, audiovisual, digital media, recorded telephone message, or other electronic communication to solicit professional employment, if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s);
- (4) shall, in the case of a recorded audio presentation or a recorded telephone message, plainly state that it is an advertisement prior to any other words being spoken and again at the presentation’s or message’s conclusion: and
- (5) shall, in the case of an audio-visual or digital media presentation, plainly state that the presentation is an advertisement:
  - (i) both verbally and in writing at the outset of the presentation and again at its conclusion; and
  - (ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(d) All written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications made to a prospective client for the purpose of obtaining professional employment of a lawyer or law firm must be reviewed and either signed by or approved in writing by the lawyer or a lawyer in the firm.

(e) A copy of each written, audio, audio-visual, digital media, recorded telephone message, or other electronic solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name, address, telephone number, or electronic address to which each such communication was sent; and the means by which each such communication was sent shall be kept by the lawyer or firm for four years after its dissemination.

(f) The provisions of paragraphs (b) and (c) of this Rule do not apply to a written, audio, audiovisual, digital media, recorded telephone message, or other form of electronic solicitation communication:

- (1) directed to a family member or a person with whom the lawyer had or has an attorney client relationship;
- (2) that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client’s specific existing legal problem of which the lawyer is aware;

- (3) if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or
- (4) that is requested by the prospective client.

Terminology: See Rule 1.00 for the definitions of "firm," "fraud," "fraudulent," "knowingly," "law firm," "person," "writing," and "written."

### **Rule 7.06. Prohibited Employment**

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by any other person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom any of the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

Terminology: See Rule 1.00 for the definitions of "firm," "knowingly," "knows," "partner," "person," and "reasonably should know."

### **Rule 7.07. Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations**

(a) Except as provided in paragraphs (c) and (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the mailing or sending by any means, including electronic, of a written, audio, audio-visual, digital or other electronic solicitation communication:

- (1) a copy of the written, audio, audio-visual, digital, or other electronic solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes or other packaging in which the communications are enclosed;
- (2) a completed lawyer advertising and solicitation communication application; and
- (3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.

(b) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the first dissemination of an advertisement in the public media, a copy of each of the lawyer's advertisements in the public media. The filing shall include:

- (1) a copy of the advertisement in the form in which it appears or will appear upon dissemination, such as a videotape, audiotape, DVD, CD, a print copy, or a photograph of outdoor advertising;
- (2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;
- (3) a statement of when and where the advertisement has been, is, or will be used;
- (4) a completed lawyer advertising and solicitation communication application form; and
- (5) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.

(c) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas no later than its first posting on the internet or other comparable network of computers information concerning the lawyer's or lawyer's firm's website. As used in this Rule, a "website" means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm's practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL). The filing shall include:

- (1) the intended initial access page of a website;
- (2) a completed lawyer advertising and solicitation communication application form; and
- (3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such websites.

(d) A lawyer who desires to secure an advance advisory opinion, referred to as a request for pre-approval, concerning compliance of a contemplated solicitation communication or advertisement may submit to the Lawyer Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b) or the intended initial access page submitted pursuant to paragraph (c), including the application form and required fee; provided however, it shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement. If a lawyer submits an advertisement or solicitation communication for pre-approval, a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or disciplinary action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials actually submitted for pre-approval if the representations, statements, materials, facts, and written assurances received in connection therewith are true and are not misleading. The finding of compliance constitutes admissible evidence if offered by a party.

(e) The filing requirements of paragraphs (a), (b), and (c) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable, Rule 7.04(a) through (c):

(1) an advertisement in the public media that contains only part or all of the following information,

(i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as “attorney,” “lawyer,” “law office,” or “firm”;

(ii) the particular areas of law in which the lawyer or firm specializes or possesses special competence;

(iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;

(iv) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;

(v) technical and professional licenses granted by this state and other recognized licensing authorities;

(vi) foreign language ability;

(vii) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c);

(viii) identification of prepaid or group legal service plans in which the lawyer participates;

(ix) the acceptance or nonacceptance of credit cards;



- (x) any fee for initial consultation and fee schedule;
  - (xi) other publicly available information concerning legal issues, not prepared or paid for by the firm or any of its lawyers, such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations, or legislation;
  - (xii) in the case of a website, links to other websites;
  - (xiii) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;
  - (xiv) any disclosure or statement required by these rules; and
  - (xv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;
- (2) an advertisement in the public media that:
- (i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and
  - (ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;
- (3) a listing or entry in a regularly published law list;
- (4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;
- (5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted mailed only to:
- (i) existing or former clients;
  - (ii) other lawyers or professionals; or
  - (iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;
- (6) a solicitation communication that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;

- (7) a solicitation communication if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or
- (8) a solicitation communication that is requested by the prospective client.

(f) If requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media and/or written solicitation communication by which the lawyer seeks paid professional employment.

Terminology: See Rule 1.00 for the definitions of "competence," "consultation," "firm," "law firm," "person," and "written."

## **Section VIII. Maintaining the Integrity of the Profession**

### **Rule 8.01. Bar Admission, Reinstatement, and Disciplinary Matters**

An applicant for admission to the bar, a petitioner for reinstatement to the bar, or a lawyer in connection with a bar admission application, a petition for reinstatement, or a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admission, reinstatement, or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.05.

Terminology: See Rule 1.00 for the definitions of "knowingly," "known," and "person."

### **Rule 8.02. Judicial and Legal Officials**

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, an adjudicatory official, or a public legal officer, or of a candidate for election or appointment to a judicial or legal office.
- (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Texas Code of Judicial Conduct.

(c) A lawyer who is a candidate for an elective public office shall comply with the applicable provisions of the Texas Election Code.

Terminology: See Rule 1.00 for the definitions of “adjudicatory official” and “knows.”

### **Rule 8.03. Reporting Professional Misconduct**

(a) Except as permitted in (c) or (d), a lawyer who knows that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate disciplinary authority.

(b) Except as permitted in (c) or (d), a lawyer 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 appropriate authority.

(c) A lawyer who knows or suspects that another lawyer or judge whose conduct the lawyer is required to report pursuant to (a) or (b) is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyer’s report to the approved peer assistance program shall disclose any disciplinary violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in (a) and (b).

(d) This rule does not require disclosure of information protected by:

(1) Rule 1.05; or

(2) any statutory or regulatory provisions applicable to the counseling activities of the approved peer assistance program.

(e) A lawyer shall not make, or assist a client in making, any agreement that restricts a lawyer’s rights or obligations under this Rule.

(f) Within thirty (30) days of a finding of guilt or an order deferring adjudication by any court for the commission of an Intentional or Serious Crime, as defined by the Texas Rules of Disciplinary Procedure, a lawyer licensed in Texas shall report, in writing, to the Office of the Chief Disciplinary Counsel, the finding of guilt, including any verdict of guilty, plea of guilty or no contest, or deferred adjudication for an Intentional or Serious Crime. The appeal of the finding of guilt or order of deferred adjudication does not stay the duty to report.

Terminology: See Rule 1.00 for the definitions of “fitness,” “knows,” “person,” “substantial,” and “writing.”

#### **Rule 8.04. Misconduct**

(a) A lawyer shall not:

- (1) violate these Rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;
- (2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects;
- (3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (4) engage in conduct constituting obstruction of justice;
- (5) state or imply an ability to influence improperly a government entity or official;
- (6) knowingly assist a judge or judicial officer in conduct that is a violation of law or applicable rules of judicial conduct;
- (7) violate any disciplinary or disability order or judgment;
- (8) fail to timely furnish to the Chief Disciplinary Counsel’s office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless the lawyer in good faith timely asserts a privilege or other legal ground for failure to do so;
- (9) engage in conduct that constitutes barratry as defined by the law of this state;
- (10) fail to comply with the Texas Rules of Disciplinary Procedure relating to notification of a lawyer’s cessation of practice;
- (11) engage in the practice of law when the lawyer is on inactive status or when the lawyer’s right to practice has been suspended or terminated, including but not limited to situations in which a lawyer’s right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Minimum Continuing Legal Education; or
- (12) violate any laws of this state relating to the professional conduct of lawyers and to the practice of law.

(b) As used in (a)(2), “serious crime” means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

Terminology: See Rule 1.00 for the definitions of “fitness,” “fraud,” “fraudulent,” and “knowingly.”

### **Rule 8.05. Jurisdiction**

(a) A lawyer is subject to the disciplinary authority of this state, if admitted to practice in this state or if specially admitted by a court of this state for a particular proceeding. In addition to being answerable for his or her conduct occurring in this state, any such lawyer also may be disciplined in this state for conduct occurring in another jurisdiction or resulting in lawyer discipline in another jurisdiction, if it is professional misconduct under Rule 8.04.

(b) A lawyer admitted to practice in this state is also subject to the disciplinary authority for:

(1) an advertisement in the public media that does not comply with these rules and that is broadcast or disseminated in another jurisdiction, even if the advertisement complies with the rules governing lawyer advertisements in that jurisdiction, if the broadcast or dissemination of the advertisement is intended to be received by prospective clients in this state and is intended to secure employment to be performed in this state; and

(2) a written solicitation communication that does not comply with these rules and that is mailed in another jurisdiction, even if the communication complies with the rules governing written solicitation communications by lawyers in that jurisdiction, if the communication is mailed to an addressee in this state or is intended to secure employment to be performed in this state.

Terminology: See Rule 1.00 for the definition of “written.”

## **Section IX. Severability of Rules**

### **Rule 9.01. Severability**

If any provision of these Rules or any application of these Rules to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of these Rules that can be given effect without the invalid provision or application and, to this end, the provisions of these Rules are severable.

Terminology: See Rule 1.00 for the definition of “person.”



**Proposed Amendments to Texas Disciplinary Rules of Professional Conduct**  
**Date: April 14, 2010**

**Rule 1.00. Terminology**

The following definitions apply to all Texas Disciplinary Rules of Professional Conduct unless the context in which the word or phrase is used requires a different definition.

(a) “Adjudicatory Official” denotes a person who serves on a Tribunal.

(b) “Adjudicatory Proceeding” denotes the consideration of a matter by a Tribunal.

(c) “Affiliated”:

(1) A lawyer is “affiliated” with a firm if either the lawyer or the lawyer’s professional entity:

(i) is a shareholder, partner, member, associate, or employee of that firm;

(ii) has any other relationship with that firm, regardless of the title given to it, that provides the lawyer with access to the confidences of the firm’s clients that is comparable to that typically afforded to lawyers in category (i); or

(iii) is held out as being in category (i) or (ii).

(2) A lawyer is “affiliated” with another lawyer if either the lawyers or their professional entities have any of the relationships described in categories (i) - (iii) above.

(d) “Belief” or “Believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.

(e) “Competent” or “Ecompetence” denotes possession of or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.

(f) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is provided in writing by the person, or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. If it is not reasonable for the lawyer to obtain or transmit the writing at the time the person provides informed consent, then the lawyer must obtain or transmit it within a reasonable time after the person provides informed consent.

(g) “Consult” or “Econsultation” denotes communication of information and advice reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(h) “Firm” or “~~L~~aw firm” denotes a lawyer or lawyers in a ~~private firm~~law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or a lawyer or lawyers employed in the legal department of a corporation, legal services organization, or other organization, or in a ~~unit of~~ government entity.

(i) “Fitness” denotes those qualities of physical; and mental ~~and psychological~~ health that enable a ~~person~~lawyer to discharge ~~at~~the lawyer’s responsibilities to a clients in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or an unreliability in carrying out, significant obligations.

(j) “Fraud” or “~~Fraudulent~~” ~~denotes conduct having a purpose~~“fraudulent,” when used in relation to conduct by a lawyer, denotes an intent to deceive and ~~not merely negligent~~either:

(1) a knowing misrepresentation or failure to apprise another of relevant information. of a material fact; or

(2) a knowing concealment of a material fact if there is a duty to disclose the material fact.

(k) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has explained, in a manner that a reasonable lawyer would believe sufficient for the person to understand, the material risks of and reasonably available alternatives to the proposed course of conduct.

(l) “Knowingly,” “~~K~~known,” or “~~K~~knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

“Law firm”: see Firm.

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

(n) “Person” includes a legal entity, as well as an individual.

(o) “Personally prohibited” means a lawyer is prohibited based on the lawyer’s direct knowledge or involvement rather than being prohibited based on the lawyer merely being affiliated with another lawyer.

(p) “Personally represents” and “represents”: A lawyer “personally represents” a client in a matter if the lawyer personally exercises legal skill or judgment on behalf of the client in connection with



that matter. A lawyer “represents” a client in a matter if the client is personally represented in that matter by that lawyer or by an affiliated lawyer.

(q) “Reasonable” or “R<sub>e</sub>asonably,” when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer.

(r) “Reasonable belief” or “R<sub>e</sub>asonably believes”believes,” when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(s) “Reasonably S<sub>h</sub>ould K<sub>n</sub>ow,” when used in reference to a lawyer, denotes that a lawyer of reasonable lawyer under the same or similar circumstancesprudence and competence would knowascertain the matter in question.-

(t) “Substantial” or “substantially,” when used in reference to degree or extent, denotes a material matter of meaningfulclear significance-or involvement.

(u) “Tribunal” denotes any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy. “Tribunal” includes such institutions as courts and a court, an arbitrator in a binding arbitration proceeding, or a legislative body, an administrative agencies when engaging in adjudicatory or licensing activities as defined by applicable law or rules of practice or procedure, as well as judges, magistrates, special masters, referees, arbitrators, mediators, hearing officers and comparable persons empowered to resolve or to recommend a resolution of agency, or another body acting in an adjudicative capacity. A legislative body, an administrative agency, or another body acts in an adjudicative capacity when, after the presentation of evidence or legal argument by a party or parties, one or more neutral officials will render a proposal for decision or a binding legal order or decision directly affecting a party’s or parties’ interests in a particular matter; but it does not include jurors, prospective jurors, legislative bodies or their committees, members or staffs, nor does it include other governmental bodies when acting in a legislative or rule-making capacity.

(v) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and e-mail. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

## Section I. Client-Lawyer Relationship

### **Rule 1.01. Competent and Diligent Representation**

(a) A lawyer shall not accept or continue employment in a legal matter ~~which~~that the lawyer knows or reasonably should know is beyond the lawyer's competence, unless:

- (1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
- (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that ~~which is~~ reasonably necessary in the circumstances.

(b) In representing a client, a lawyer shall not: ~~(1) neglect a legal matter entrusted to the lawyer; or (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients~~ but shall act with reasonable diligence and promptness.

(c) As used in this Rule, "neglect" signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

Terminology: See Rule 1.00 for the definitions of "competence," "competent," "informed consent," "knows," "reasonable," "reasonably," "reasonably should know," and "represents."

### **Rule 1.02. Scope ~~and Objectives~~ of Representation and Allocation of Authority**

(a) Subject to ~~paragraphs (b), through (e), (f), and (g)~~ Rule 1.14, a lawyer shall abide by a client's decisions:

- (1) concerning the objectives and general methods of representation;
- (2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law;
- (3) ~~i~~n a criminal case, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer may limit the scope, objectives, and general methods of the representation if the client provides informed ~~consents after consultation~~ and the limitation is reasonable under the circumstances.

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning, or application of the law.

(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.

(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.

(f) When a lawyer knows that a client expects representation not permitted by law or these Rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

~~(g) A lawyer shall take reasonable action to secure the appointment of a guardian or other legal representative for, or seek other protective orders with respect to, a client whenever the lawyer reasonably believes that the client lacks legal competence and that such action should be taken to protect the client.~~

Terminology: See Rule 1.00 for the definitions of "consult," "consultation," "informed consent," "knows," "reasonable," "represents," and "substantial."

### **Rule 1.03. Communication**

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep a the client reasonably informed about the status of a the matter; and

(4) promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Terminology: See Rule 1.00 for the definitions of “consult,” “informed consent,” “reasonably,” and “represents.”

#### **Rule 1.04. Fees**

(a) A lawyer shall not enter into an arrangement for, charge, or collect an illegal ~~fee or unconscionable fee~~. A fee is unconscionable if a competent lawyer could not form a reasonable belief or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a reasonable lawyer would be left with a firm belief or conviction that the fee is in excess of a reasonable fee.

(b) Factors that may be considered in determining the reasonableness of a fee include, but are not limited to ~~the exclusion of other relevant factors~~, the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

(c) ~~When The scope of the lawyer has not regularly represented the client,~~ representation and the basis or rate of the fee and expenses shall be communicated to the client, ~~preferably in writing,~~ before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any change in the basis or rate of the fee or expense shall also be communicated to the client.

(d) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by ~~paragraph (c)~~ law or ~~other law~~ (f). A contingent fee agreement shall be:

- (1) be in writing, and ~~shall~~signed by the client;
- (2) state the method by which the fee is to be determined. ~~It, including~~ if there is to be a differentiation in the percentage or percentages that ~~shall~~will accrue to the lawyer in the event of settlement, trial, or appeal, and the percentage for each ~~shall be stated. The agreement shall~~;
- (3) state the litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated; and
- (4) inform the client of the litigation and other expenses for which the client will be liable whether or not the client is the prevailing party.

(e) Upon conclusion of a contingent-fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(ef) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

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

- (1) the division is:
  - (i) in proportion to the professional services performed by each lawyer; or
  - (ii) made between lawyers who assume joint responsibility for the representation; and
- (2) the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including:
  - (i) the identity of all lawyers or law firms who will participate in the fee-sharing arrangement; and;
  - (ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation; and
  - (iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and
- (3) the aggregate fee does not violate paragraph(a).

(gh) Every agreement that allows a lawyer or law firm to associate other counsel in the representation of a person, or to refer the person to other counsel for such representation, and that results in such an association with or referral to a different law firm or a lawyer in such a different firm, shall be confirmed by an arrangement conforming to paragraph(f)(g). Consent by a client or a prospective client without knowledge of the information specified in subparagraph(f)(g)(2) does

not constitute a confirmation within the meaning of this ~~r~~Rule. No ~~attorney~~lawyer shall collect or seek to collect ~~a~~ fees or ~~expenses~~ in connection with any such agreement that is not confirmed in that way, except for:

- (1) the reasonable value of legal services provided to that person; and
- (2) the reasonable and necessary expenses actually incurred on behalf of that person.

~~(h)~~ Paragraph ~~(f)~~ of this rule does not apply to payment made to a former partner or associate pursuant to a separation or retirement agreement, or to payment made to a lawyer referral program certified by the State Bar of Texas in accordance with the Texas Lawyer Referral Service Quality Act, Tex. Occ. Code 952.001 et seq., or any amendments or recodifications thereof law.

Terminology: See Rule 1.00 for the definitions of “belief,” “firm,” “law firm,” “person,” “reasonable,” “represent,” “writing,” and “written.”

#### **Rule 1.05. Confidentiality ~~of~~ Information**

~~(a) “Confidential information” includes both “privileged information” and “unprivileged client information.” “Privileged information” refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates. “Unprivileged client information” means:~~

(1) in the case of a client or former client, is all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client from whatever source, whether acquired by the lawyer personally or through an agent, other than information that is or becomes generally known or is readily obtainable from sources generally available to the public; and  
(2) in the case of a prospective client, as described in Rule 1.17, is information furnished to the lawyer by that prospective client in the course of seeking legal representation, other than information that:

- (i) is or becomes generally known or is readily obtainable from sources generally available to the public; or
- (ii) is furnished under the circumstances described in Rule 1.17(d)(2).

~~(b) Except as permitted by paragraphs (c) and (d) or Rule 1.14, or as required by paragraphs (e), and (f), a lawyer shall not knowingly:~~

- ~~(1) Reveal confidential information of a client or a former client to:~~
  - ~~(i) a person that the client has instructed is not to receive the information; or~~

- ~~(ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.~~
- ~~(2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultation.~~
- ~~(3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.~~
- ~~(4) Use privileged information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation.~~
- (1) disclose information the lawyer knows or reasonably should know is confidential; or
- (2) use information the lawyer knows or reasonably should know is confidential to the disadvantage of a client, former client, or prospective client.

~~(c) A lawyer may reveal confidential information:~~

- ~~(1) When the lawyer has been expressly authorized to do so in order to carry out the representation.~~
- ~~(2) When the client consents after consultation.~~
- ~~(3) To the client, the client's representatives, or the members, associates, and employees of the lawyer's firm, except when otherwise instructed by the client.~~
- ~~(4) When the lawyer has reason to believe it is necessary to do so in order to comply with a court order, a Texas Disciplinary Rules of Professional Conduct, or other law.~~
- ~~(5) To the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client.~~
- ~~(6) To establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer or the lawyer's associates based upon conduct involving the client or the representation of the client.~~
- ~~(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act.~~
- ~~(8) To the extent revelation reasonably appears necessary to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used.~~

~~(d) A lawyer also may reveal unprivileged client information:~~

- ~~(1) When impliedly authorized to do so in order to carry out the representation.~~
- ~~(2) When the lawyer has reason to believe it is necessary to do so in order to:
  - ~~(i) carry out the representation effectively;~~
  - ~~(ii) defend the lawyer or the lawyer's employees or associates against a claim of wrongful conduct;~~~~

- ~~(iii) respond to allegations in any proceeding concerning the lawyer's representation of the client; or~~
- ~~(iv) prove the services rendered to a client, or the reasonable value thereof, or both, in an action against another person or organization responsible for the payment of the fee for services rendered to the client.~~

(c) A lawyer may disclose or use confidential information to the extent reasonably necessary:

- (1) when the client, former client, or prospective client permits the lawyer to do so or provides informed consent to do so;
- (2) except when otherwise instructed, when communicating with:
  - (i) representatives of the client, former client, or prospective client;
  - (ii) any affiliated lawyer or employees of the lawyer or affiliated lawyer; or
  - (iii) any persons who are required to be supervised in accordance with the requirements of Rule 5.03;
- (3) when the lawyer reasonably believes it is necessary:
  - (i) to comply with a court order, law, or these Rules;
  - (ii) to prevent the client, former client, or prospective client from committing a criminal or fraudulent act;
  - (iii) to rectify the consequences of a client or former client's criminal or fraudulent act in the commission of which the lawyer's services had been used;
  - (iv) to prevent reasonably certain death or substantial bodily harm;
  - (v) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, former client, or prospective client;
  - (vi) to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client, former client, or prospective client was involved;
  - (vii) to respond to allegations in any proceeding concerning the lawyer's representation of the client or former client or discussion with a prospective client;
  - or
  - (viii) to carry out the representation effectively, except when otherwise instructed by the client; or
- (4) when the lawyer seeks legal advice about the lawyer's compliance with these Rules.

~~(e)~~ (d) A lawyer shall disclose confidential information:

- (1) ~~W~~hen a lawyer has ~~confidential~~ information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person, ~~the lawyer shall reveal confidential information~~ to the extent ~~revelation~~



disclosure reasonably appears necessary to prevent the client from committing the criminal or fraudulent act; or

~~(f<sub>2</sub>) A lawyer shall reveal confidential information~~ when required to do so by Rule ~~3.03(a)(2); 3.03(b)(c)-(e);~~ or ~~by~~ Rule 4.01(b).

Terminology: See Rule 1.00 for the definitions of “affiliated,” “informed consent,” “knowingly,” “known,” “knows,” “person,” “reasonably,” “reasonably believes,” “reasonably should know,” “represents,” and “substantial.”

### **Rule 1.06. Conflicts of Interest: ~~General Rule~~**

(a) A conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

~~(a)~~ A lawyer shall not, even with informed consent, represent opposing parties ~~to~~ in the same ~~litigation~~ matter before a tribunal.

~~(b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:~~

~~(1) involves a substantially related matter in which that person’s interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer’s firm; or~~

~~(2) reasonably appears to be or become adversely limited by the lawyer’s or law firm’s responsibilities to another client or to a third person or by the lawyer’s or law firm’s own interests.~~

~~(c) In situations other than the situation~~ A lawyer may represent a client in the circumstances described in (b), when representation of a client will involve a conflict of interest the lawyer may represent the client if:

(1) the lawyer reasonably believes ~~the representation of each client will not be materially affected~~ that the lawyer will be able to provide competent and diligent representation to the client; and

(2) the representation complies with Rule 1.07; and

(3) each affected or potentially affected ~~the~~ client provides informed ~~consents to such representation after full disclosure of the existence, nature, implications, and possible~~

~~adverse consequences of the comment representation and the advantages involved, if any,~~  
confirmed in writing.

~~(d) A lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties to the dispute.~~

~~(e)~~ If a lawyer has accepted representation in violation of this Rule, or if ~~multiple~~ representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.

~~(f)~~ If/When a lawyer ~~would be~~ personally prohibited by this Rule from ~~engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct.~~ representing a person in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that person in that matter, unless the prohibition is based only on a personal interest of the personally prohibited lawyer and the affiliated lawyer reasonably believes that the affiliated lawyer will be able to provide competent and diligent representation.

Terminology: See Rule 1.00 for the definitions of "affiliated," "competent," "confirmed in writing," "informed consent," "knows," "person," "personally prohibited," "reasonably believes," "reasonably should know," "represents," "tribunal," and "writing."

#### **Rule 1.07. Conflicts of Interest: ~~Intermediary~~ Multiple Clients in the Same Matter**

(a) A lawyer shall not ~~act as intermediary between~~ represent two or more clients in a matter unless:  
(1) ~~the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's written consent to the common representation;~~  
(1) the representation complies with Rule 1.06;  
(2) the lawyer reasonably believes that ~~the matter can be resolved without the necessity of contested litigation on terms compatible with the:~~  
(i) the clients can agree among themselves to a resolution of any material issue concerning the matter;  
(ii) each client is capable of understanding what is in that client's best interests, that each client will be able to make adequately interest and making informed decisions in the matter and that there is little risk of:

- (iii) the lawyer can deal impartially with each of the clients; and  
(iv) the representation is unlikely to result in material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and  
(3) ~~the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients;~~ prior to undertaking the representation or as soon as practicable thereafter the lawyer discloses to the clients that during the representation the lawyer:  
(i) must act impartially as to all clients; and  
(ii) cannot serve as an advocate for one client in the matter against any of the other clients, as a consequence of which:  
(A) each client must be willing to make independent decisions without the lawyer's advice to resolve issues that arise among the clients concerning the matter; and  
(B) events might occur during joint representation that could require the lawyer to withdraw from representing any or all of the clients before the matter is completed; and  
(4) after making the determinations required by (a)(1) and (a)(2), and as soon as reasonably practicable after making the disclosures required by (a)(3), the lawyer obtains each client's informed consent, confirmed in writing, to the representation.

~~(b) While acting as intermediary, the lawyer shall consult with each client concerning the decision to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.~~

~~(c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.~~

~~(d) Within the meaning of this Rule, a lawyer acts as intermediary if the lawyer represents two or more parties with potentially conflicting interests.~~

(b) When a lawyer represents multiple clients in a matter pursuant to a court order or appointment, and the court requires or permits the lawyer to conduct the representation in accordance with standards that differ from those set out in this Rule, the lawyer may comply with those different standards notwithstanding this Rule.

~~(e) If~~ When a lawyer ~~would be~~ is personally prohibited by this Rule from ~~engaging in particular conduct, no other lawyer while a member of or associated with that lawyer's firm may engage in that~~

conduct representing a person in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that person in that matter.

Terminology: See Rule 1.00 for the definitions of “affiliated,” “confirmed in writing,” “informed consent,” “knows,” “person,” “personally prohibited,” “reasonably,” “reasonably believes,” “reasonably should know,” “represents,” and “writing.”

### **Rule 1.08. Conflicts of Interest: Prohibited Transactions**

(a) A lawyer shall not enter into a business transaction with a client, other than a standard commercial transaction between the lawyer and the client for products or services that the client generally markets to others, unless:

(1) the lawyer reasonably believes that the terms of the transaction ~~and terms on which between~~ the lawyer ~~acquires and~~ the ~~interest client:~~

(i) are fair and reasonable to the client; and

(ii) if known to the lawyer and not known to the client and, are fully disclosed in a manner ~~which that~~ can be reasonably understood by the client;

(2) ~~the client is given~~ the lawyer advises the client of the desirability of seeking, and gives the client a reasonable opportunity to seek the advice of independent legal counsel ~~in on~~ the transaction; and

(3) the client ~~consents in writing thereto~~ provides informed consent, confirmed in a writing signed by the client, to the material terms of the transaction and the lawyer’s role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall ~~not neither~~ prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer ~~as a parent any substantial gift, child, sibling, or spouse nor solicit~~ any substantial gift from a client, ~~including a testamentary gift, except where the client for the lawyer or for a person related to the lawyer, unless the lawyer or other person is related to the donee client.~~ For the purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, and other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(c) ~~Prior to~~ Before the conclusion of all aspects of the matter giving rise to ~~the a~~ lawyer’s employment, a lawyer shall not make or negotiate an agreement with a client, prospective client, or former client ~~giving, or anyone acting on that person’s behalf, that gives~~ the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(d) A lawyer shall not provide financial assistance to a client in connection with ~~pending or contemplated litigation or administrative~~ pending proceedings before a tribunal, except that:

(1) a lawyer may advance or guarantee ~~court~~ the costs; and expenses of ~~litigation or administrative~~ such proceedings, and reasonably necessary medical and living expenses, the repayment of which may be contingent on the outcome of the matter; and

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

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

(1) the client ~~consents;~~ provides informed consent;

(2) ~~there is no interference with the lawyer's independence of~~ the lawyer reasonably believes that the lawyer's exercise of independent professional judgment ~~or with~~ behalf of the ~~client-lawyer relationship~~ client will not be affected; and

(3) information relating to representation of ~~a~~ the client is protected as required by Rule 1.05.

(f) ~~A~~ Except as otherwise authorized by law, a lawyer who represents two or more clients shall not ~~participate in making~~ make an aggregate settlement of the claims of or against ~~the~~ that lawyer's clients, or in a criminal case an aggregated agreement to guilty or nolo contendere pleas, unless ~~each client has consented after consultation, including disclosure of~~ the lawyer obtains the informed consent of each client, confirmed in writing, after advising each client of:

(1) the total amount of the settlement or result of the agreement;

(2) the existence and nature of all the material claims, defenses, or pleas involved and of;

(3) the nature and extent of the each client's participation of each person in the settlement or agreement, whether by contribution to payment, share of receipts, or resolution of criminal charges;

(4) the total fees, costs, and expenses to be paid to the lawyer from the proceeds, or by an opposing party or parties; and

(5) the method by which the costs and expenses are to be apportioned to each client.

(g) A lawyer shall not:

(1) make an agreement with a client prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented or professional misconduct unless the client is represented by independent legal counsel in making the agreement, or;

(2) make an agreement with a client that requires a dispute between the lawyer and client to be referred to binding arbitration unless either:

(i) the client is represented by independent legal counsel in making the agreement;  
or

(ii) the lawyer discloses to the client, in a manner that can reasonably be understood by the client, the scope of the issues to be arbitrated, the fact that the client will waive a trial before a judge or jury on these issues, and that the rights of appeal may be limited; or

(3) settle a claim or potential claim for such liability malpractice or other professional misconduct with an unrepresented a client or former client with out first advising of the lawyer not represented by independent legal counsel with respect to that claim unless the lawyer advises that person in writing that independent representation is appropriate of the desirability of seeking, and gives a reasonable opportunity to seek, the advice of independent legal counsel in connection therewith.

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

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

(2) contract in a civil case with a client for a contingent fee that is permissible under Rule 1.04.

(i) ~~If a~~ When a lawyer ~~would be~~ is personally prohibited by this Rule from engaging in particular conduct, no ~~other lawyer while a member of or associated with that lawyer's firm may~~ lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall engage in that conduct.

~~(j) As used in this Rule, "business transactions" does not include standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others.~~

Terminology: See Rule 1.00 for the definitions of "affiliated," "confirmed in writing," "informed consent," "known," "knows," "person," "personally prohibited," "reasonable," "reasonably," "reasonably believes," "reasonably should know," "represents," "substantial," "tribunal," and "writing."

### **Rule 1.09. Conflicts of Interest: Former Client**

(a) ~~Without prior consent;~~ Unless the former client provides informed consent, confirmed in writing:

(1) a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client; and

(2) if a lawyer personally prohibited by (a)(1) has left the firm with which the lawyer was affiliated at the time the lawyer personally represented the former client, no lawyer who is presently affiliated with that firm, and who knows or reasonably should know of the prohibition, shall represent another person in the same or a substantially related matter in which the formerly affiliated lawyer represented the client if any lawyer remaining in the firm has information protected by Rule 1.05 or 1.09(d) that is material to the matter.

(b) Unless the former client provides informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was affiliated previously represented a client:

(1) whose interests are materially adverse to the interests of that person; and

(2) about whom the lawyer acquired information protected by Rule 1.05 or 1.09(d) that is material to the matter.

(c) Unless the former client provides informed consent, confirmed in writing:

(1) a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client: ~~(1)~~ in which such other person questions the validity of the lawyer's services or work product for the former client; and

(2) if a lawyer personally prohibited by (c)(1) has left the firm with which the lawyer was affiliated at the time the lawyer provided the services or work product to the former client, no lawyer who is presently affiliated with that firm, and who knows or reasonably should know of the prohibition, shall represent a person in a matter that requires a challenge to the formerly affiliated lawyer's services or work product for the former client.

(2) if the representation in reasonable probability will involve a violation of Rule 1.05; or

(3) if it is the same or a substantially related matter:

~~(b) Except to the extent authorized by Rule 1.10, when lawyers are or have become members of or associated with a firm, none of them shall knowingly represent a client if any one of them practicing alone would be prohibited from doing so by paragraph (a):~~

~~(c) When the association of a lawyer with a firm has terminated, the lawyers who were then associated with that lawyer shall not knowingly represent a client if the lawyer whose association with that firm has terminated would be prohibited from doing so by paragraph (a)(1) or if the representation in reasonable probability will involve a violation of Rule 1.05:~~

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

(1) use information relating to the representation to the disadvantage of the former client except as these Rules provide, or when the information is or becomes generally known or is readily obtainable from sources generally available to the public; or

(2) disclose information relating to the representation except as these Rules provide.

(e) When a lawyer is personally prohibited by this Rule from representing a person in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that person in that matter.

Terminology: See Rule 1.00 for the definitions of “affiliated,” “confirmed in writing,” “firm,” “informed consent,” “knowingly,” “known,” “knows,” “person,” “personally prohibited,” “personally represents,” “reasonably should know,” “represents,” and “writing.”

**Rule 1.10. Successive Government and Private Employment Special Conflicts of Interest: Former and Current Government Officers and Employees**

(a) Except as law may otherwise expressly permit, a lawyer shall not personally represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government entity provides informed consent, confirmed in writing, to the representation~~agency consents after consultation.~~

~~(b) No lawyer in a firm with which a lawyer subject to paragraph (a) is associated may knowingly undertake or continue representation in such a~~ When a lawyer is personally prohibited by (a) from representing a private client in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that private client in that matter unless:

(1) The personally prohibited lawyer subject to paragraph (a) is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is given with reasonable promptness promptly given to the appropriate government agency entity disclosing the affiliation of the personally prohibited lawyer and the screening measures adopted to ensure compliance with this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows ~~or should know~~ is confidential government information about a person ~~or other legal entity~~ acquired when the lawyer was a public officer or employee ~~may shall~~ not personally represent a private client whose interests are adverse to that person ~~or legal entity. in a matter in which the~~



lawyer knows or reasonably should know the information could be used to the material disadvantage of that person. As used in this Rule, the term “confidential government information” means information that has been obtained under government authority and that, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and that is not otherwise available to the public.

~~(d) After learning that a lawyer in the firm is subject to paragraph (c) with respect to a particular matter, a firm may undertake or continue representation~~ When a lawyer is personally prohibited by (c) from representing a private client in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that private client in that matter only if that disqualified unless the personally prohibited lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(e) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee shall not:

(1) ~~P~~participate in a matter involving a former private client ~~when the lawyer had represented that client in the same matter if doing so would violate Rule 1.09;~~

(2) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer’s stead in the matter the appropriate government entity provides informed consent, confirmed in writing; or

~~(23) N~~negotiate for private employment with any person who is involved as a party or as attorney a lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a court lawyer to an adjudicatory official may negotiate for private employment in accordance with Rule 1.11.

(f) As used in this ~~r~~Rule, the term “matter” ~~does not include regulation-making or rule-making proceedings or assignments, but~~ includes:

(1) ~~A~~any adjudicatory proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other similar, comparable particular action or transaction involving a specific party or parties, but not regulation-making or rule-making proceedings or assignments; and

(2) any other action or transaction covered by the conflict of interest statutes or by conflict of interest rules of the appropriate government agency entity.

(g) As used in this ~~r~~Rule, the term ~~“confidential government information” means information which has been obtained under governmental authority and which, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose;~~

~~and which is not otherwise available to the public~~ “private client” means any person, including a government entity, who is represented by the lawyer when the lawyer is engaged in the private practice of law.

(h) As used in this Rule, ~~“Private Client” includes not only a private party but also a governmental agency if the lawyer is not a public officer or employee of that agency.~~ the term “screened” means that the law firm:

(1) has instituted measures adequate to prevent participation of the personally prohibited lawyer in the matter and to protect from disclosure information that the personally prohibited lawyer is obligated to protect under applicable law or these Rules; and

(2) can demonstrate that the personally prohibited lawyer did not disclose the information described in (h)(1) before the law firm implemented the screening measures described in (h)(1).

~~(i) A lawyer who serves as a public officer or employee of one body politic after having served as a public officer of another body politic shall comply with paragraphs (a) and (c) as if the second body politic were a private client and with paragraph (e) as if the first body politic were a private client.~~

Terminology: See Rule 1.00 for the definitions of “adjudicatory official,” “adjudicatory proceeding,” “affiliated,” “confirmed in writing,” “informed consent,” “knows,” “law firm,” “person,” “personally prohibited,” “personally represents,” “reasonably should know,” “represents,” “substantially,” “writing,” and “written.”

**Rule 1.11. Special Conflicts of Interest: Adjudicatory Officials, or Third-Party Neutrals, and Court Lawyers-Clerk**

(a) A lawyer shall not personally represent anyone person in connection with a matter in which the lawyer ~~has passed upon the merits or otherwise~~ participated personally and substantially as an adjudicatory official or a court lawyer clerk to an adjudicatory official, or as a third-party neutral in a nonbinding proceeding, unless all parties to the proceeding provide informed consent after disclosure, confirmed in writing.

(b) A lawyer ~~who is an adjudicatory official~~ shall not negotiate for employment with any person who is involved as a party or as attorney lawyer for a party in a pending matter in which that official the lawyer is participating personally and substantially as an adjudicatory official, or as a third-party neutral in a nonbinding proceeding. A lawyer serving as a court lawyer clerk to an adjudicatory official may negotiate for employment with a party or attorney lawyer involved in a pending matter

in which the clerk court lawyer is participating personally and substantially, but only after the clerk court lawyer has notified the adjudicatory official.

~~(c) If paragraph (a) is applicable to a lawyer, no other lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the~~ When a lawyer is personally prohibited by (a) from representing a person in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that person in that matter unless:

- (1) the personally prohibited lawyer ~~who is subject to paragraph (a) is~~ timely screened from any participation in the matter in accordance with Rule 1.10(h) and is apportioned no part of the fee therefrom; and
- (2) written notice is promptly given to the ~~other parties to the proceeding,~~ parties and any appropriate tribunal disclosing the affiliation of the personally prohibited lawyer and the screening measures adopted to ensure compliance with this Rule.

(d) For purposes of this Rule, “court lawyer” includes law clerks, briefing attorneys, and staff attorneys, whether or not assigned to a particular adjudicatory official, as well as persons who were not yet licensed as lawyers at the time they began providing services to a tribunal.

Terminology: See Rule 1.00 for the definitions of “adjudicatory official,” “affiliated,” “confirmed in writing,” “informed consent,” “knows,” “person,” “personally prohibited,” “personally represents,” “reasonably should know,” “represents,” “substantially,” “tribunal,” “writing,” and “written.”

### **Rule 1.12. Organization as a Client**

~~(a) Notwithstanding that a lawyer employed or retained by reports to and takes direction from an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity’s organization’s duly authorized constituents, in the situations described in paragraph (b) the lawyer a lawyer employed or retained to provide legal services for an organization represents that organization and shall proceed as reasonably necessary in the best legal interest of the organization ~~without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization~~ at all times, including the situations described in (d).~~

(b) A lawyer shall explain that the lawyer represents the organization rather than a constituent of the organization when the lawyer knows or reasonably should know the organization’s interests are

adverse to the interests of that constituent, or when an explanation appears reasonably necessary to avoid misunderstanding on the part of that constituent.

(c) A lawyer shall not jointly represent the organization and a constituent of the organization in a matter unless the joint representation is in conformity with Rule 1.07.

~~(b)~~ A lawyer ~~representing who represents~~ an organization ~~shall~~must take reasonable remedial actions whenever the lawyer ~~learns or knows~~ has information clearly establishing that:

- ~~(1) an officer, employee, or other person associated with~~ constituent of the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law ~~which that~~ reasonably ~~might~~ may be imputed to the organization;
- (2) the violation is likely to result in substantial injury to the organization; and
- (3) the violation is related to a matter within the scope of the lawyer's representation of the organization.

~~(c)~~ ~~Except where prior disclosure to persons outside the organization is~~ Unless otherwise required by law or these other Rules, a lawyer shall first attempt to resolve a violation by taking measures ~~within the organization. In determining the internal procedures, actions or measures that are reasonably necessary in order to comply with paragraphs (a) and (b), a lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Such procedures, actions and measures~~ reasonable remedial actions may include, but are not limited to, one or more of the following:

- (1) asking for reconsideration of the matter;
- (2) advising that a separate legal opinion on the matter be sought for presentation to an appropriate authority ~~in~~ within the organization; and
- (3) referring the matter to a higher authority ~~in~~ within the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act ~~in~~ on behalf of the organization as determined by applicable law.

(f) If, despite the lawyer's initiation of reasonable remedial action, the organization continues to pursue, or fails to address in a timely and appropriate manner, a matter called to its attention by the lawyer pursuant to (d) and (e), then the lawyer may disclose confidential information to the extent permitted by Rule 1.05.

~~(d) Upon a lawyer's resignation or termination of the relationship in compliance with Rule 1.15(g)~~ A lawyer who resigns or is terminated from representing an organization shall comply with Rule

1.16. Upon doing so, a lawyer is excused from ~~further~~ proceeding further as ~~required by paragraphs set out in (ad), (be), and (ef), and~~ Rule 1.05 governs any further obligations ~~of the lawyer are determined by Rule 1.05:~~ regarding confidential information.

~~(e) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing or when explanation appears reasonably necessary to avoid misunderstanding on their part.~~

Terminology: See Rule 1.00 for the definitions of "knows," "reasonable," "reasonably," "reasonably should know," "represents," and "substantial."

### **Rule 1.13. Conflicts: Public Interests Activities**

~~A lawyer serving as a director, officer or member of a legal services, civic, charitable or law reform organization, apart from the law firm in which the lawyer practices, shall not knowingly participate in a decision or action of the organization:~~

~~(a) if participating in the decision would violate the lawyer's obligations to a client under Rule 1.06; or~~

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

### **Rule 1.13. Prohibited Sexual Relations**

(a) A lawyer shall not condition the representation of a client or prospective client, or the quality of such representation, on having any person engage in sexual relations with the lawyer.

(b) A lawyer shall not solicit or accept sexual relations as payment of fees.

(c) A lawyer shall not have sexual relations with a client that the lawyer is personally representing unless the lawyer and client are married to each other, or are engaged in an ongoing consensual sexual relationship that began before the representation.

Terminology: See Rule 1.00 for the definitions of "person," "personally represents," and "represents."

### **Rule 1.14. Diminished Capacity**

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action. Such action may include, but is not limited to, consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) When taking protective action pursuant to (b), the lawyer may disclose the client's confidential information to the extent the lawyer reasonably believes is necessary to protect the client's interests, unless otherwise prohibited by law.

Terminology: See Rule 1.00 for the definitions of "consult," "reasonably," "reasonably believes," "represents," and "substantial."

### **Rule 1.145. Safekeeping Property**

~~(a) A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession~~ When, in connection with a representation, a lawyer receives property that belongs in whole or in part to a client or third person, the lawyer shall safeguard the property and hold it in trust separately from the lawyer's own property. ~~Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account~~ In addition, the lawyer shall:

(1) deposit any funds into one or more accounts designated as trust accounts, maintained in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded;

(2) identify any other property as such and safeguard it appropriately; and

(3) Complete create and maintain complete records of such account all trust-account funds and other property shall be kept by the lawyer and shall be preserved preserve those records for a period of five years after termination of the representation.

(b) Upon receiving ~~funds or other~~ the property described in (a) ~~which a client or third person has an interest, a~~ the lawyer shall promptly with reasonable promptness:

(1) notify the client of the receipt and proposed distribution of such property; or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(2) notify the third person of the receipt of such property the lawyer knows belongs to the third person;

~~(c) When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and other person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. All funds in a trust or escrow account shall be disbursed only to those persons~~

(3) distribute to the client or third person such property the client or third person is entitled to receive them by virtue of the representation or by law. If, except as otherwise specifically provided by this Rule or law;

(4) upon the client's request or when otherwise specifically required by these Rules, render a full accounting to the client as to such property the lawyer is holding in trust; and

(5) upon the third person's request, render an accounting to the third person as to such property the lawyer knows belongs to the third person.

(c) When, in the course of representation, a lawyer possesses property to which the lawyer knows two or more persons, one of whom may be the lawyer, claim a right and a dispute arises concerning their respective interests, the portion in dispute shall be kept separated by the lawyer until rights, the lawyer shall, unless the lawyer reasonably believes the claim giving rise to the dispute is resolved, and the undisputed portion shall be distributed appropriately. not valid, retain disputed funds in a trust account and continue to safeguard other property appropriately, deposit disputed funds or other property into the registry of a court, or otherwise safeguard the disputed funds or other property in a manner agreeable to those claiming a right. When the dispute has been resolved, the lawyer shall with reasonable promptness distribute the property in the lawyer's possession to persons entitled to the property.

(d) A lawyer shall deposit unearned fees and advanced expenses into a client trust account, to be withdrawn by the lawyer only as fees are earned or expenses are incurred.

(e) Notwithstanding (a), a lawyer may deposit the lawyer's own funds into a client trust account for the purpose of paying service charges on that account.

Terminology: See Rule 1.00 for the definitions of “informed consent,” “knows,” “person,” “reasonable,” “reasonably believes,” and “represents.”

### **Rule 1.156. Declining or Terminating Representation**

(a) ~~A~~Except as stated in (c), a lawyer shall ~~decline to not~~ represent a client or, where~~n~~ representation has commenced, shall withdraw, ~~except as stated in paragraph (c);~~ from the representation of a client, if:

- (1) the representation will result in violation of ~~Rule 3.08, other applicable rules of professional conduct or other~~ the law or these Rules;
- (2) the lawyer’s physical; ~~or~~ mental or psychological condition materially impairs the lawyer’s fitness to represent the client; or
- (3) the lawyer is discharged, ~~with or without good cause.~~

(b) Except as required by ~~paragraph~~ (a), a lawyer shall not withdraw from representing a client unless:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes ~~may be~~ is criminal or fraudulent;
- (3) the client has used the lawyer’s services to perpetrate a crime or fraud;
- (4) a client insists upon pursuing an objective or taking action that the lawyer considers repugnant or imprudent or with which the lawyer has fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services, including an obligation to pay the lawyer’s fee as agreed, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

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

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, ~~such as~~ including giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payments of fee or expense that has not been earned or incurred. The



lawyer may retain papers relating to the client to the extent permitted by ~~other~~ law only if such retention will not prejudice the client in the subject matter of the representation.

Terminology: See Rule 1.00 for the definitions of “fitness,” “reasonable,” “reasonably,” “reasonably believes,” “represents,” “substantially,” and “tribunal.”

### **Rule 1.17. Prospective Clients**

(a) A person who in good faith discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) A lawyer shall not use or disclose confidential information provided by the prospective client, except as provided in Rule 1.05 or (d)(2).

(c) A lawyer who has received confidential information from a prospective client shall not represent a person with interests materially adverse to those of the prospective client in the same or a substantially related matter, except as provided in (d)(1) or (d)(2). When a lawyer is personally prohibited by this paragraph from representing a person in a matter, no lawyer who is affiliated with the personally prohibited lawyer, and who knows or reasonably should know of the prohibition, shall represent that person in that matter.

(d) When a lawyer has received confidential information from a prospective client, representation of a client with interests materially adverse to those of the prospective client in the same or a substantially related matter is permissible if:

(1) the prospective client has provided informed consent, confirmed in writing, to the representation; or

(2) the lawyer conditioned the discussion with the prospective client on the prospective client’s informed consent that no information disclosed during the discussion would be confidential or prohibit the lawyer from representing a different client in the matter.

Terminology: See Rule 1.00 for the definitions of “affiliated,” “confirmed in writing,” “informed consent,” “knows,” “person,” “personally prohibited,” “reasonably should know,” “represents,” and “writing.”

## **Section II. Counselor**

### **Rule 2.01. Advisor**

In ~~advising or otherwise~~ representing a client, a lawyer shall exercise independent professional judgment and ~~render~~ give candid advice.

Terminology: See Rule 1.00 for the definition of “represents.”

### **Rule 2.02. Evaluation for Use by Third Persons**

A lawyer shall not ~~undertake~~ provide an evaluation of a matter affecting a client for the use of someone other than the client unless:

- (a) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer’s relationship with the client; and
- (b) the client ~~consents after consultation~~ provides informed consent.

Terminology: See Rule 1.00 for the definitions of “informed consent,” “person,” and “reasonably believes.”

## **Section III. Advocate**

### **Rule 3.01. Meritorious Claims and Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes ~~that~~ there is a nonfrivolous basis for doing so ~~that is not frivolous~~.

Terminology: See Rule 1.00 for the definition of “reasonably believes.”

### **Rule 3.02. Minimizing the Burdens and Delays of Litigation**

In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

Terminology: See Rule 1.00 for the definition of “reasonably.”

### **Rule 3.03. Candor Toward ~~the~~ a Tribunal**

- (a) A lawyer shall not knowingly:
  - (1) make a false statement of material fact or law to a tribunal;
  - (2) fail to ~~disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act~~ correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(3) ~~in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;~~

~~(4)~~ fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

~~(5)~~ offer or use evidence that the lawyer knows to be false.

(b) Notwithstanding any other of these Rules, a lawyer may refuse to offer or use evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes, but does not know, is false.

(c) If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered or used material evidence and the lawyer comes to know of its falsity, the lawyer shall make a good faith reasonable effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such those efforts are unsuccessful, the lawyer shall take other reasonable remedial measures, including, if necessary, disclosure of the true facts falsehood to the tribunal.

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

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

(f) The duties obligations stated in paragraphs (a) and (b) this Rule continue until remedial legal measures are no longer reasonably possible.

Terminology: See Rule 1.00 for the definitions of "adjudicatory proceeding," "knowingly," "known," "knows," "person," "reasonable," "reasonably," "reasonably believes," "represents," and "tribunal."

### **Rule 3.04. Fairness in Adjudicatory Proceedings**

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter, destroy, or conceal a document or other material that a ~~competent~~ lawyer would reasonably believe has potential or actual evidentiary value; or counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or pay, offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

- (1) expenses reasonably incurred by a witness in attending or testifying;
- (2) reasonable compensation to a witness for ~~his~~ loss of time in attending or testifying; and
- (3) a reasonable fee for the professional services of an expert witness;

(c) except as stated in ~~paragraph~~(d), in representing a client before a tribunal:

- (1) habitually violate an established rule of procedure or ~~of~~ evidence;
- (2) state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceeding or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness;
- (3) state a personal opinion as to the justness of a cause, ~~the~~ credibility of a witness, ~~the~~ culpability of a civil litigant, or ~~the~~ guilt or innocence of an accused, except that a lawyer may argue ~~on his~~ the lawyer's analysis of the evidence and other permissible considerations for any position or conclusion with respect to the matters stated herein in this Rule;
- (4) ask any question intended to degrade a witness or other person except where en the lawyer reasonably believes that the question will lead to relevant and admissible evidence; or
- (5) engage in conduct intended to disrupt the proceedings;

(d) knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal, except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience; or

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

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

Terminology: See Rule 1.00 for the definitions of "adjudicatory proceeding," "knowingly," "person," "reasonable," "reasonably," "reasonably believes," "represents," and "tribunal."

### Rule 3.05. Maintaining the Impartiality of a Tribunal

A lawyer shall not:

(a) seek to influence a tribunal concerning a pending matter by means prohibited by law or applicable rules of practice or procedure;

(b) except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause another to communicate ex parte with a tribunal for the purpose of influencing ~~that entity or person~~ the tribunal concerning a pending matter other than:

(1) in the course of official proceedings in the cause;

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

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

~~(c) For purposes of this rule:~~

~~(1) “Matter” has the meanings ascribed by it in Rule 1.10(f) of these Rules;~~

~~(2) A matter is “pending” before a particular tribunal either when that entity has been selected to determine the matter or when it is reasonably foreseeable that that entity will be so selected.~~

Terminology: See Rule 1.00 for the definitions of “represents,” “tribunal,” and “writing.”

### Rule 3.06. Maintaining the Integrity of the Jury System

(a) A lawyer shall not:

(1) conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a ~~venireman~~ venire member or juror; or

(2) seek to influence a ~~venireman~~ venire member or juror concerning the merits of a pending matter by means prohibited by law or applicable rules of practice or procedure.

(b) Prior to discharge of the jury from further consideration of a matter, a lawyer connected ~~therewith~~ with the matter shall not communicate with or cause another to communicate with anyone ~~he~~ the lawyer knows to be a ~~member of the venire from which the jury will be selected or any member,~~ juror, or alternate juror, except in the course of official proceedings.

(c) During the trial of a case, a lawyer not connected ~~therewith~~ with the case shall not communicate with or cause another to communicate with a juror or alternate juror concerning the matter.

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

(e) All restrictions imposed by this Rule ~~upon~~ a lawyer also apply to communications with or investigations of a venire member's ~~of a~~ juror's family ~~of a venireman or a juror member~~.

(f) A lawyer shall reveal promptly to the court improper conduct, of which the lawyer has knowledge, by a ~~venireman~~ venire member or a juror, or by another toward a ~~venireman or a juror~~ or a venire member, juror, or venire member's or juror's family member of his family, of which the lawyer has knowledge.

(g) ~~As used in this Rule, the terms "matter" and "pending" have the meanings specified in Rule 3.05(c).~~

Terminology: See Rule 1.00 for the definition of "knows."

### **Rule 3.07. Trial Publicity**

(a) ~~In the course of representing a client, a~~ A lawyer who is participating or who has participated in the investigation or litigation of a matter shall not make an extrajudicial statement ~~that a~~ the lawyer knows or reasonably ~~person would expect to~~ should know will be disseminated by means of public communication ~~if the lawyer knows or reasonably should know that it~~ and will have a substantial likelihood of materially prejudicing an adjudicatory proceeding. ~~A lawyer shall not counsel or assist another person to make such a statement.~~

(b) ~~A lawyer ordinarily will violate paragraph (a), and the likelihood of a violation increases if the adjudication is ongoing or imminent, by making an extrajudicial statement of the type referred to in that paragraph when the statement refers to:~~

- ~~(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness; or the expected testimony of a party or witness;~~
- ~~(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense; the existence or contents of any confession, admission, or statement given by a defendant or suspect; or that person's refusal or failure to make a statement;~~
- ~~(3) the performance, refusal to perform, or results of any examination or test; the refusal or failure of a person to allow or submit to an examination or test; or the identity or nature of physical evidence expected to be presented;~~

- (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; or
- (5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.

(c) A lawyer ordinarily will not violate paragraph (a) by making an extrajudicial statement of the type referred to in that paragraph when the lawyer merely states:

- (1) the general nature of the claim or defense;
- (2) the information contained in a public record;
- (3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense, claim or defense involved;
- (4) except when prohibited by law, the identity of the persons involved in the matter;
- (5) the scheduling or result of any step in litigation;
- (6) a request for assistance in obtaining evidence, and information necessary thereto;
- (7) a warning of danger concerning the behavior of a person involved, when there is a reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (8) if a criminal case:
  - (i) the identity, residence, occupation and family status of the accused;
  - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
  - (iii) the fact, time and place of arrest; and
  - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(b) This Rule does not preclude a lawyer from:

- (1) responding to allegations of misconduct made against that lawyer, provided that the lawyer complies with the limitations in (a); or
- (2) making a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this subparagraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(c) No lawyer affiliated in a firm with a lawyer subject to (a) shall make a statement prohibited by (a).

Terminology: See Rule 1.00 for the definitions of "adjudicatory proceeding," "affiliated," "believes," "firm," "knows," "reasonable," "reasonably should know," and "substantial."

### Rule 3.08. Lawyer as a Witness

(a) A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or ~~believes~~ reasonably should know that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client, unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony ~~will~~ relates solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;
- (3) the testimony relates to the nature and value of legal services rendered in the case;
- (4) the lawyer is a party to the action and is appearing pro se; or
- (5) the lawyer has promptly notified opposing counsel that the lawyer expects to testify in the ~~matter~~ adjudicatory proceeding and disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer ~~believes~~ knows or reasonably should know that the lawyer will be compelled to furnish testimony that will be substantially adverse to the lawyer's client, unless the client ~~consents after full disclosure~~ provides informed consent.

(c) Without the client's informed consent, a lawyer may not act as an advocate in an adjudicatory proceeding in which another lawyer in the lawyer's firm is prohibited by ~~paragraphs~~ (a) or (b) from serving as an advocate.

(d) If the lawyer to be called as a witness could not also serve as an advocate under this Rule, that lawyer shall not take an active role before the tribunal in the presentation of the matter.

Terminology: See Rule 1.00 for the definitions of "adjudicatory proceeding," "believes," "firm," "informed consent," "knows," "reasonably should know," "substantial," "substantially," and "tribunal."

### Rule 3.09. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) ~~refrain from prosecuting~~ not prosecute or ~~threatening~~ threaten to prosecute a charge ~~that~~ the prosecutor knows is not supported by probable cause;

(b) ~~refrain from conducting~~ not conduct or ~~assisting~~ assist in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised



of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pre-trial, trial, or post-trial rights;

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

(e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07.

Terminology: See Rule 1.00 for the definitions of “known,” “knows,” “person,” “reasonable,” and “tribunal.”

### **Rule 3.10. Advocate in ~~Nonadjudicative~~ Nonadjudicatory Proceedings**

A lawyer representing a client before a legislative or administrative body in a ~~nonadjudicative nonadjudicatory~~ proceeding shall disclose that the appearance is in a representative capacity and shall conform to ~~the provisions of~~ Rules 3.04(a) through (d), 3.05(a), and 4.01.

Terminology: See Rule 1.00 for the definitions of “adjudicatory proceeding,” and “represents.”

## **Section IV. Non-Client Relationships**

### **Rule 4.01. Truthfulness in Statements to Others**

In the course of representing a client, a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.

Terminology: See Rule 1.00 for the definitions of “knowingly,” “person,” and “represents.”

#### **Rule 4.02. Communication ~~w~~With One Represented by Counsel**

(a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization, or ~~entity of~~ government entity the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(b) In representing a client, a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another lawyer about the subject of the representation, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(c) For the purpose of this ~~r~~Rule, “organization” or ~~entity of government~~ includes: ~~(1) those~~ “government entity” means a person ~~presently having a who:~~

(1) has managerial responsibility within an organization or ~~entity of~~ government entity that relates to the subject of the representation; or

(2) those persons presently is employed by such organization or government entity and whose act or omission in connection with the subject of representation may make the organization or ~~entity of~~ government entity vicariously liable for such act or omission.

(d) When a person, organization, or ~~entity of~~ government entity that is represented by a lawyer in a matter seeks advice regarding that matter from another lawyer, the second lawyer is not prohibited by paragraph (a) from giving such advice without notifying or seeking consent of the first lawyer.

Terminology: See Rule 1.00 for the definitions of “knows,” “person,” and “represents.”

#### **Rule 4.03. Dealing With an Unrepresented Person**

~~In dealing~~ A lawyer who communicates on behalf of a client with a person who is not represented by counsel, ~~a lawyer~~ shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Terminology: See Rule 1.00 for the definitions of “knows,” “person,” “reasonable,” “reasonably should know,” and “represents.”

#### **Rule 4.04. Respect for Rights of a Third Persons**

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to ~~embarrass~~ harass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer shall not present, participate in presenting, or threaten to present:  
(1) criminal or disciplinary charges solely to gain an advantage in a civil matter; or  
(2) civil, criminal, or disciplinary charges against a complainant, ~~a~~ witness, or ~~a~~ potential witness in a bar disciplinary proceeding solely to prevent participation by the complainant, witness, or potential witness in the bar disciplinary proceeding therein.

Terminology: See Rule 1.00 for the definitions of “person,” “represents,” and “substantial.”

### **Section V. Law Firms and Associations**

#### **Rule 5.01. Responsibilities of a ~~Partner~~ Managerial or Supervisory Lawyer**

A lawyer shall be subject to discipline because of another lawyer’s violation of these Rules if the lawyer has managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and that managerial or supervisory lawyer ~~rules of professional conduct if:~~

(a) ~~The lawyer is a partner or supervising lawyer and~~ orders, encourages, or knowingly permits the conduct involved; or

(b) ~~The lawyer is a partner in the law firm in which the other lawyer practices, is the general counsel of a government agency’s legal department in which the other lawyer is employed, or has direct supervisory authority over the other lawyer, and~~ with knowledge of the other lawyer’s violation of these rRules, knowingly fails to take reasonable remedial action within the scope of the lawyer’s authority to avoid or mitigate the consequences of the other lawyer’s violation.

Terminology: See Rule 1.00 for the definitions of “law firm,” “knowingly,” and “reasonable.”

#### **Rule 5.02. Responsibilities of a Supervised Lawyer**

(a) A lawyer is bound by these rRules notwithstanding that the lawyer acted ~~under~~ at the supervision direction of another person, ~~except that a~~.

(b) A supervised lawyer does not violate these rRules if that lawyer acts in accordance with a managerial or supervisory lawyer's reasonable resolution of an arguable question of professional duty conduct.

Terminology: See Rule 1.00 for the definitions of "person" and "reasonable."

### **Rule 5.03. Responsibilities Regarding ~~Nonlawyer Assistants~~ Nonlawyers**

With respect A lawyer shall be subject to discipline for the conduct of a nonlawyer employed by, or retained by, or associated affiliated with a lawyer or law firm that would be a violation of these Rules if engaged in by a lawyer, if:

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

(b) a lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if: (1) the lawyer orders, encourages, or knowingly permits the conduct involved; or

(2c) the lawyer:

(i1) is a partner has managerial authority in the law firm in which the person is employed, retained by, or associated with; or is the general counsel of a government agency's legal department in which the person is employed, retained by or associated with; that has retained, employed, or affiliated the nonlawyer, or has direct supervisory authority over such person nonlawyer; and

(ii2) with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action within the scope of the lawyer's authority to avoid or mitigate the consequences of that person's misconduct nonlawyer's misconduct.

Terminology: See Rule 1.00 for the definitions of "affiliated," "knowingly," "law firm," and "reasonable."

### **Rule 5.04. Professional Independence of a Lawyer**

(a) A lawyer or law firm shall not share or promise to share legal fees with a non-lawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate, or a lawful court order, may provide for the payment of money, over a reasonable period of time, to the

lawyer's estate to or for the benefit of the lawyer's heirs or personal representatives, beneficiaries, or former spouse, after the lawyer's death or as otherwise provided by law or court order;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation ~~which~~ that fairly represents the services rendered by the deceased lawyer; ~~and~~

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

(4) a lawyer may share legal fees with a lawyer referral service in accordance with law.

(b) A lawyer shall not form a partnership firm with a non-lawyer if any ~~of the activities~~ activity of the partnership firm consists of the practice of law.

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

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

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

(2) a nonlawyer is a corporate director or officer thereof; or

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

Terminology: See Rule 1.00 for the definitions of "firm," "law firm," "partner," "person," and "reasonable."

### **Rule 5.05. Unauthorized Practice of Law**

A lawyer shall not:

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

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

Terminology: See Rule 1.00 for the definition of "person."

## **Rule 5.06. Restrictions on Right to Practice**

A lawyer shall not participate in offering or making:

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

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a suit or controversy, except that as part of the settlement of a disciplinary proceeding against a lawyer an agreement may be made placing restrictions on the right of that lawyer to practice.

Terminology: See Rule 1.00 for the definition of "firm."

## **Rule 5.07. ~~[Blank]~~Rule 5.08. Prohibited Discriminatory Activities**

(a) A lawyer shall not willfully, in connection with an adjudicatory proceeding, except as provided in ~~paragraph~~ (b), manifest, by words or conduct, bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation towards any person involved in that proceeding in any capacity.

(b) Paragraph (a) does not apply to a lawyer's decision whether to represent a particular person in connection with an adjudicatory proceeding, ~~nor or~~ to the process of jury selection, ~~nor or~~ to communications protected as "confidential information" under these Rules. See Rule 1.05(a); ~~(b)~~. It also does not preclude advocacy in connection with an adjudicatory proceeding involving any of the factors set out in ~~paragraph~~ (a) if that advocacy:

(i) is necessary in order to address any substantive or procedural issues raised by the proceeding; and

(ii) is conducted in conformity with applicable rulings and orders of a tribunal and applicable rules of practice ~~and or~~ procedure.

Terminology: See Rule 1.00 for the definitions of "adjudicatory proceeding," "person," "represents," and "tribunal."

## **Section VI. Public Service**

### **Rule 6.01. ~~Accepting~~ Appointments by a Tribunal**

(a) When a tribunal appoints a lawyer to represent a person, the lawyer shall represent the person until the representation is terminated in accordance with Rule 1.16(c).

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

- (a1) representing the client is likely to result in violation of law or these Rules of professional conduct;
- (b2) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c3) 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.

Terminology: See Rule 1.00 for the definitions of "person," "reasonable," "represents," and "tribunal."

### Rule 1.13-6.02. Conflicts: Public Interests Activities Membership in Legal Services Organization

A lawyer serving as a director, officer, or member of a legal services, ~~civic, charitable or law reform~~ organization, apart from the law firm in which the lawyer practices, shall not knowingly participate in a decision or action of the organization if:

- (a) if participating in the decision would violate the lawyer's obligations to a client under Rule 1.06; or
- (b) where the decision could have a material adverse effect on the representation of any client of the organization whose interests are adverse to a client of the lawyer.

Terminology: See Rule 1.00 for the definitions of "knowingly," "law firm," and "represents."

### Rule 6.03. 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 the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact to the organization but need not identify the client.

Terminology: See Rule 1.00 for the definition of "knows."

## **Section VII. Information About Legal Services**

### **Rule 7.01. Firm Names and Letterhead**

(a) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain “P.C.,” “L.L.P.,” “P.L.L.C.,” or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

(b) A firm with offices in more than one jurisdiction may use the same name 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 occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a 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) A lawyer shall not hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates.

(e) A lawyer shall not advertise in the public media or seek professional employment by any communication under a trade or fictitious name, except that a lawyer who practices under a firm name as authorized by paragraph (a) of this Rule may use that name in such advertisement or communication but only if that name is the firm name that appears on the lawyer’s letterhead, business cards, office sign, fee contracts, and with the lawyer’s signature on pleadings and other legal documents.

(f) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).

**Terminology: See Rule 1.00 for the definitions of “firm,” “partner,” and “substantial.”**



## **Rule 7.02. Communications Concerning a Lawyer's Services**

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it:

- (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (2) contains any reference in a public media advertisement to past successes or results obtained unless
  - (i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict,
  - (ii) the amount involved was actually received by the client,
  - (iii) the reference is accompanied by adequate information regarding the nature of the case or matter and the damages or injuries sustained by the client, and
  - (iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well;
- (3) 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 these rules or other law;
- (4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;
- (5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;
- (6) designates one or more specific areas of practice in an advertisement in the public media or in a solicitation communication unless the advertising or soliciting lawyer is competent to handle legal matters in each such area of practice; or
- (7) uses an actor or model to portray a client of the lawyer or law firm.

(b) Rule 7.02(a)(6) does not require that a lawyer be certified by the Texas Board of Legal Specialization at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(6) with respect to the area(s) of practice in which such lawyer is certified.

(c) A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04.

(d) Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or solicitation communication with respect to which such required statement or

disclaimer relates; provided however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.

Terminology: See Rule 1.00 for the definitions of “competent,” “firm,” “law firm,” and “tribunal.”

### **Rule 7.03. Prohibited Solicitations and Payments**

(a) A lawyer shall not by in-person contact, or by regulated telephone or other electronic contact as defined in paragraph (f) seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer’s advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization’s members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services. In those situations where in-person or telephone or other electronic contact is permitted by this paragraph, a lawyer shall not have such a contact with a prospective client if:

- (1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;
- (2) the communication contains information prohibited by Rule 7.02(a); or
- (3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(c) A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(fg) or by paragraph (b) of this Rule.

(d) A lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c).

(e) A lawyer shall not participate with or accept referrals from a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(f) As used in paragraph (a), “regulated telephone or other electronic contact” means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or firm.

Terminology: See Rule 1.00 for the definitions of “firm,” “fraud,” “fraudulent,” “knows,” “law firm,” “person,” “reasonable,” and “reasonably believes.”

#### **Rule 7.04. Advertisements in the Public Media**

(a) A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation “Patents,” “Patent Attorney,” or “Patent Lawyer,” or any combination of those terms. A lawyer engaged in the trademark practice may use the designation “Trademark,” “Trademark Attorney,” or “Trademark Lawyer,” or any combination of those terms. A lawyer engaged in patent and trademark practice may hold himself or herself out as specializing in “Intellectual Property Law,” “Patent, Trademark, Copyright Law and Unfair Competition,” or any of those terms.

(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.

(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.

(b) A lawyer who advertises in the public media:

(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement; and

(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member

of an organization the name of which implies that its members possess special competence, except that:

(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, “Board Certified, [area of specialization] — Texas Board of Legal Specialization;” and

(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, “Certified [area of specialization] [name of certifying organization],” but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the Bar; and

(3) shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement:

(i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(c) Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously and in language easily understood by an ordinary consumer.

(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, television, the internet, or electronic or digital media.

(e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.

(f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.

(g) In advertisements in the public media, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised.

(h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of contingent fee work are disclosed in such advertisement, it must also disclose whether the percentage is computed before or after expenses are deducted from the recovery.

(i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.

(j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three days a week; or

(2) the advertisement states:

(i) the days and times during which a lawyer will be present at that office, or

(ii) that meetings with lawyers will be by appointment only.

(k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.

(m) No motto, slogan or jingle that is false or misleading may be used in any advertisement in the public media.

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:

- (1) states that the advertisement is paid for by the cooperating lawyers;
- (2) names each of the cooperating lawyers;
- (3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;
- (4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and
- (5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:

- (1) ensuring that each advertisement does not violate this Rule; and
- (2) complying with the filing requirements of Rule 7.07.

(q) If these rules require that specific qualifications, disclaimers or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers or disclosures must be presented in the same manner as the communication and with equal prominence.

(r) A lawyer who advertises on the Internet must display the statements and disclosures required by Rule 7.04.

Terminology: See Rule 1.00 for the definitions of "competence," "consultation," "firm," "law firm," "knows," "person," "reasonably," "reasonably believes," "writing," and "written."

### **Rule 7.05. Prohibited Written, Electronic, or Digital Solicitations**

(a) A lawyer shall not send, deliver, or transmit, or knowingly permit or knowingly cause another person to send, deliver, or transmit, a written, audio, audiovisual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment on behalf of any lawyer or law firm if:

- (1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;
- (2) the communication contains information prohibited by Rule 7.02 or fails to satisfy each of the requirements of Rule 7.04(a) through (c), and (g) through (q) that would be applicable to the communication if it were an advertisement in the public media; or
- (3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) Except as provided in paragraph (f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:

- (1) shall, in the case of a non-electronically transmitted written communication, be plainly marked "ADVERTISEMENT" on its first page, and on the face of the envelope or other packaging used to transmit the communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the word "ADVERTISEMENT" shall be:
  - (i) in a color that contrasts sharply with the background color; and
  - (ii) in a size of at least 3/8" vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger;
- (2) shall, in the case of an electronic mail message, be plainly marked "ADVERTISEMENT" in the subject portion of the electronic mail and at the beginning of the message's text;
- (3) shall not be made to resemble legal pleadings or other legal documents;
- (4) shall not reveal on the envelope or other packaging or electronic mail subject line used to transmit the communication, or on the outside of a self-mailing brochure or pamphlet, the nature of the legal problem of the prospective client or non-client; and
- (5) shall disclose how the lawyer obtained the information prompting the communication to solicit professional employment if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s).

(c) Except as provided in paragraph (f) of this Rule, an audio, audio-visual, digital media, recorded telephone message, or other electronic communication sent to prospective clients for the purpose of obtaining professional employment:

- (1) shall, in the case of any such communication delivered to the recipient by non-electronic means, plainly and conspicuously state in writing on the outside of any envelope or other packaging used to transmit the communication, that it is an "ADVERTISEMENT";
- (2) shall not reveal on any such envelope or other packaging the nature of the legal problem of the prospective client or non-client;
- (3) shall disclose, either in the communication itself or in accompanying transmittal message, how the lawyer obtained the information prompting such audio, audiovisual, digital

media, recorded telephone message, or other electronic communication to solicit professional employment, if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s);

(4) shall, in the case of a recorded audio presentation or a recorded telephone message, plainly state that it is an advertisement prior to any other words being spoken and again at the presentation's or message's conclusion; and

(5) shall, in the case of an audio-visual or digital media presentation, plainly state that the presentation is an advertisement:

(i) both verbally and in writing at the outset of the presentation and again at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(d) All written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications made to a prospective client for the purpose of obtaining professional employment of a lawyer or law firm must be reviewed and either signed by or approved in writing by the lawyer or a lawyer in the firm.

(e) A copy of each written, audio, audio-visual, digital media, recorded telephone message, or other electronic solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name, address, telephone number, or electronic address to which each such communication was sent; and the means by which each such communication was sent shall be kept by the lawyer or firm for four years after its dissemination.

(f) The provisions of paragraphs (b) and (c) of this Rule do not apply to a written, audio, audiovisual, digital media, recorded telephone message, or other form of electronic solicitation communication:

(1) directed to a family member or a person with whom the lawyer had or has an attorney client relationship;

(2) that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;

(3) if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or

(4) that is requested by the prospective client.

Terminology: See Rule 1.00 for the definitions of "firm," "fraud," "fraudulent," "knowingly," "law firm," "person," "writing," and "written."



## **Rule 7.06. Prohibited Employment**

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by any other person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom any of the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

Terminology: See Rule 1.00 for the definitions of "firm," "knowingly," "knows," "partner," "person," and "reasonably should know."

## **Rule 7.07. Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations**

(a) Except as provided in paragraphs (c) and (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the mailing or sending by any means, including electronic, of a written, audio, audio-visual, digital or other electronic solicitation communication:

- (1) a copy of the written, audio, audio-visual, digital, or other electronic solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes or other packaging in which the communications are enclosed;
- (2) a completed lawyer advertising and solicitation communication application form; and
- (3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.

(b) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the first dissemination of an advertisement in the public media, a copy of each of the lawyer's advertisements in the public media. The filing shall include:

- (1) a copy of the advertisement in the form in which it appears or will appear upon dissemination, such as a videotape, audiotape, DVD, CD, a print copy, or a photograph of outdoor advertising;
- (2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;
- (3) a statement of when and where the advertisement has been, is, or will be used;
- (4) a completed lawyer advertising and solicitation communication application form; and
- (5) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.

(c) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas no later than its first posting on the internet or other comparable network of computers information concerning the lawyer's or lawyer's firm's website. As used in this Rule, a "website" means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm's practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL). The filing shall include:

- (1) the intended initial access page of a website;
- (2) a completed lawyer advertising and solicitation communication application form; and
- (3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such websites.

(d) A lawyer who desires to secure an advance advisory opinion, referred to as a request for pre-approval, concerning compliance of a contemplated solicitation communication or advertisement may submit to the Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b) or the intended initial access page submitted pursuant to paragraph (c), including the application form and required fee; provided however, it shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such

advertisement. If a lawyer submits an advertisement or solicitation communication for pre-approval, a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or disciplinary action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials actually submitted for pre-approval if the representations, statements, materials, facts, and written assurances received in connection therewith are true and are not misleading. The finding of compliance constitutes admissible evidence if offered by a party.

(e) The filing requirements of paragraphs (a), (b), and (c) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable, Rule 7.04(a) through (c):

(1) an advertisement in the public media that contains only part or all of the following information:

- (i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as “attorney,” “lawyer,” “law office,” or “firm”;
- (ii) the particular areas of law in which the lawyer or firm specializes or possesses special competence;
- (iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;
- (iv) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;
- (v) technical and professional licenses granted by this state and other recognized licensing authorities;
- (vi) foreign language ability;
- (vii) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c);
- (viii) identification of prepaid or group legal service plans in which the lawyer participates;
- (ix) the acceptance or nonacceptance of credit cards;
- (x) any fee for initial consultation and fee schedule;
- (xi) other publicly available information concerning legal issues, not prepared or paid for by the firm or any of its lawyers, such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations, or legislation;
- (xii) in the case of a website, links to other websites;
- (xiii) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;
- (xiv) any disclosure or statement required by these rules; and

- (xv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;
- (2) an advertisement in the public media that:
  - (i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and
  - (ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;
- (3) a listing or entry in a regularly published law list;
- (4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;
- (5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted mailed only to:
  - (i) existing or former clients;
  - (ii) other lawyers or professionals; or
  - (iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;
- (6) a solicitation communication that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;
- (7) a solicitation communication if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or
- (8) a solicitation communication that is requested by the prospective client.

(f) If requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media or solicitation communication by which the lawyer seeks paid professional employment.

Terminology: See Rule 1.00 for the definitions of "competence," "firm," "law firm," "person," and "written."

## **Section VIII. Maintaining the Integrity of the Profession**

### **Rule 8.01. Bar Admission, Reinstatement, and Disciplinary Matters**

An applicant for admission to the bar, a petitioner for reinstatement to the bar, or a lawyer in connection with a bar admission application, a petition for reinstatement, or a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admission, reinstatement, or disciplinary authority, except that this rRule does not require disclosure of information otherwise protected by Rule 1.05.

Terminology: See Rule 1.00 for the definitions of “knowingly,” “known,” and “person.”

### **Rule 8.02. Judicial and Legal Officials**

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, an adjudicatory official, or a public legal officer, or of a candidate for election or appointment to a judicial or legal office.
- (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Texas Code of Judicial Conduct.
- (c) A lawyer who is a candidate for an elective public office shall comply with the applicable provisions of the Texas Election Code.

Terminology: See Rule 1.00 for the definitions of “adjudicatory official” and “knows.”

### **Rule 8.03. Reporting Professional Misconduct**

- (a) Except as permitted in paragraphs (c) or (d), a lawyer having knowledge who knows that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.

(b) Except as permitted in ~~paragraphs~~ (c) or (d), 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 appropriate authority.

(c) A lawyer ~~having knowledge~~ who knows or ~~suspecting~~ suspects that another lawyer or judge whose conduct the lawyer is required to report pursuant to ~~paragraphs~~ (a) or (b) ~~of this Rule~~ is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyer's report to the approved peer assistance program shall disclose any disciplinary violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in ~~paragraphs~~ (a) and (b).

(d) This rule does not require disclosure of ~~knowledge or~~ information ~~otherwise~~ protected as ~~confidential information~~ by:

(1) ~~by~~ Rule 1.05; or

(2) ~~by~~ any statutory or regulatory provisions applicable to the counseling activities of the approved peer assistance program.

(e) A lawyer shall not make, or assist a client in making, any agreement that restricts a lawyer's rights or obligations under this Rule.

(f) Within thirty (30) days of a finding of guilt or an order deferring adjudication by any court for the commission of an Intentional or Serious Crime, as defined by the Texas Rules of Disciplinary Procedure, a lawyer licensed in Texas shall report, in writing, to the Office of the Chief Disciplinary Counsel, the finding of guilt, including any verdict of guilty, plea of guilty or no contest, or deferred adjudication for an Intentional or Serious Crime. The appeal of the finding of guilt or order of deferred adjudication does not stay the duty to report.

Terminology: See Rule 1.00 for the definitions of "fitness," "knows," "person," "substantial," and "writing."

#### **Rule 8.04. Misconduct**

(a) A lawyer shall not:

(1) violate these ~~r~~Rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;

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

- (3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (4) engage in conduct constituting obstruction of justice;
- (5) state or imply an ability to influence improperly a government agency entity or official;
- (6) knowingly assist a judge or judicial officer in conduct that is a violation of law or applicable rules of judicial conduct or other law;
- (7) violate any disciplinary or disability order or judgment;
- (8) fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless ~~he or she~~ the lawyer in good faith timely asserts a privilege or other legal ground for failure to do so;
- (9) engage in conduct that constitutes barratry as defined by the law of this state;
- (10) fail to comply with ~~section 13.01 of~~ the Texas Rules of Disciplinary Procedure relating to notification of ~~an attorney's~~ a lawyer's cessation of practice;
- (11) engage in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations wherein which a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Minimum Continuing Legal Education; or
- (12) violate any ~~other~~ laws of this state relating to the professional conduct of lawyers and to the practice of law.

(b) As used in ~~subsection (a)(2) of this Rule~~, "serious crime" means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

Terminology: See Rule 1.00 for the definitions of "fitness," "fraud," "fraudulent," and "knowingly."

### **Rule 8.05. Jurisdiction**

(a) A lawyer is subject to the disciplinary authority of this state, if admitted to practice in this state or if specially admitted by a court of this state for a particular proceeding. In addition to being answerable for his or her conduct occurring in this state, any such lawyer also may be disciplined in this state for conduct occurring in another jurisdiction or resulting in lawyer discipline in another jurisdiction, if it is professional misconduct under Rule 8.04.

(b) A lawyer admitted to practice in this state is also subject to the disciplinary authority for:

- (1) an advertisement in the public media that does not comply with these rules and that is broadcast or disseminated in another jurisdiction, even if the advertisement complies with

the rules governing lawyer advertisements in that jurisdiction, if the broadcast or dissemination of the advertisement is intended to be received by prospective clients in this state and is intended to secure employment to be performed in this state; and  
(2) a written solicitation communication that does not comply with these rules and that is mailed in another jurisdiction, even if the communication complies with the rules governing written solicitation communications by lawyers in that jurisdiction, if the communication is mailed to an addressee in this state or is intended to secure employment to be performed in this state.

Terminology: See Rule 1.00 for the definition of “written.”

## **Section IX. Severability of Rules**

### **Rule 9.01. Severability**

If any provision of these **r**Rules or any application of these **r**Rules to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of these **r**Rules that can be given effect without the invalid provision or application and, to this end, the provisions of these **r**Rules are severable.

Terminology: See Rule 1.00 for the definition of “person.”