Supreme Court of Texas

Misc. Docket No. 24-9054

Final Approval and Adoption of Amendments to Texas Disciplinary Rules of Professional Conduct 1.08, 1.09, 3.09, 4.03, 5.01, and 5.05; of New Texas Disciplinary Rules of Professional Conduct 1.10 and 1.18; and of New Texas Rule of Disciplinary Procedure 13.05

ORDERED that:

1. On October 6, 2023, in Misc. Dkt. No. 23-9080, the Court submitted proposed amendments to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure ("Proposed Rules") to the State Bar of Texas members for a referendum. The referendum occurred between April 1, 2024, and April 30, 2024.

2. On May 1, 2024, the State Bar of Texas Executive Director certified that the Proposed Rules were approved by a majority of the votes cast and submitted a Petition for Order of Promulgation ("Petition") requesting the Court's adoption of the Proposed Rules.

3. On April 16, 2024, in Misc. Dkt. No. 24-9015, the Court provided notice of public deliberations on the Proposed Rules and invited public comment until May 1, 2024.

4. On May 6, 2024, pursuant to Texas Government Code section 81.08791, the Court deliberated on the Proposed Rules and broadcast those deliberations for public viewing. The broadcast is available on the Court's YouTube page.

5. The Court has considered the votes of the State Bar of Texas members, the Petition, the public comments received, and the presentations and materials submitted at the Court's public deliberations on May 6, 2024.

6. Under Texas Government Code sections 81.0879, 81.08791, and 81.08792, the Court approves and adopts amendments to Texas Disciplinary Rules of Professional Conduct 1.08, 1.09, 3.09, 4.03, 5.01, and 5.05; new Texas Disciplinary Rules of Professional Conduct 1.10 and 1.18; and new Texas Rule

of Disciplinary Procedure 13.05, as set forth in this Order, effective October 1, 2024. The votes are as follows:

a. amended Texas Disciplinary Rule of Professional Conduct 1.08 is approved unanimously;

b. amended Texas Disciplinary Rule of Professional Conduct 1.09 is approved unanimously;

c. new Texas Disciplinary Rule of Professional Conduct 1.10 is approved unanimously;

d. new Texas Disciplinary Rule of Professional Conduct 1.18 is approved unanimously;

e. amended Texas Disciplinary Rule of Professional Conduct 3.09 is approved unanimously;

f. amended Texas Disciplinary Rule of Professional Conduct 4.03 is approved by a vote of 8 to 1, with Justice Blacklock voting to reject;

g. amended Texas Disciplinary Rule of Professional Conduct 5.01 is approved by a vote of 8 to 1, with Justice Blacklock voting to reject;

h. amended Texas Disciplinary Rule of Professional Conduct 5.05 is approved unanimously; and

i. new Texas Rule of Disciplinary Procedure 13.05 is approved unanimously.

7. With respect to the Texas Disciplinary Rules of Professional Conduct, the Court also adopts new and amended interpretive comments, certain renumbering amendments, and amendments to the "Terminology" section, as set forth in this Order, effective October 1, 2024.

8. Under Texas Government Code sections 81.0879, 81.08791, and 81.08792, the Court rejects proposed new or amended Texas Disciplinary Rules of Professional Conduct 1.00, 8.05, and 8.06. The votes are as follows:

a. proposed new Texas Disciplinary Rule of Professional Conduct 1.00 is rejected unanimously; however, the Court adopts amendments to the existing Terminology section of the Texas Disciplinary Rules of Professional Conduct as noted;

b. proposed amended Texas Disciplinary Rule of Professional Conduct 8.05 is rejected by a vote of 5 to 4, with Justice Lehrmann, Justice Blacklock, Justice Bland, Justice Huddle, and Justice Young voting to reject and Chief Justice Hecht and Justice Boyd, Justice Devine, and Justice Busby voting to approve; and

c. proposed new Texas Disciplinary Rule of Professional Conduct 8.06 is rejected by a vote of 5 to 4, with Justice Lehrmann, Justice Blacklock, Justice Bland, Justice Huddle, and Justice Young voting to reject and Chief Justice Hecht and Justice Boyd, Justice Devine, and Justice Busby voting to approve.

9. Texas Disciplinary Rules of Professional Conduct 1.09, 1.10, 1.18, and 5.01 and Texas Rule of Disciplinary Procedure 13.05 are provided in clean form because they either are new rules or have been completely rewritten. All other changes are provided in redline.

10. The below signatures certify that this Order correctly sets forth the:

a. votes, as recorded above; and

b. new and amended rules and comments, as approved by majority vote.

11. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

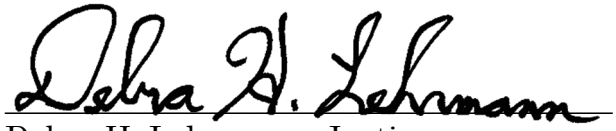
b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

c. send a copy of this Order to each elected member of the Legislature; and

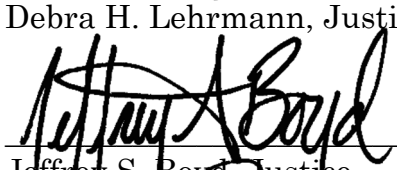
d. submit a copy of this Order for publication in the *Texas Register*.

Dated: August 27, 2024.

Nathan L. Hecht, Chief Justice

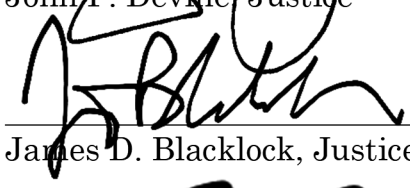


Debra H. Lehrmann, Justice

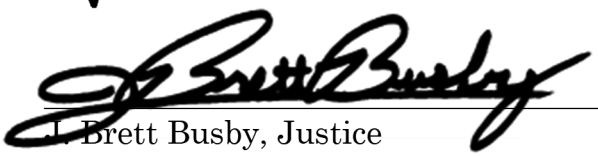


Jeffrey S. Boyd, Justice

John P. Devine, Justice



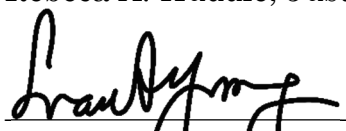
James D. Blacklock, Justice



J. Brett Busby, Justice

Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

Terminology

"Adjudicatory Official" denotes a person who serves on a Tribunal.

"Adjudicatory Proceeding" denotes the consideration of a matter by a Tribunal.

"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.

"Competent" or "Competence" denotes possession or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.

"Consult" or "Consultation" denotes communication of information and advice reasonably sufficient to permit the client to appreciate the significance of the matter in question.

"Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

"Firm" or "Law firm" denotes a lawyer or lawyers in a private firm; 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.

"Fitness" denotes those qualities of physical, mental and psychological health that enable a person to discharge a lawyer's responsibilities to 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 unreliability in carrying out, significant obligations.

"Fraud" or "Fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or negligent failure to apprise another of relevant information.

"Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about material risks of and reasonably available alternatives to the proposed course of

conduct. If a rule calling for informed consent requires specific disclosures (see, e.g., Rule 1.06(c)(2)), consent is not informed unless those disclosures have been made.

"Knowingly," "Known," or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Law firm": see "Firm."

"Partner" denotes an individual or corporate member of a partnership or a shareholder in a law firm organized as a professional corporation.

"Person" includes a legal entity as well as an individual.

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

"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.

"Represent," "Represents," or "Representation." A lawyer represents a person if the person is a client of the lawyer. If the relationship of client and lawyer terminates, the lawyer's representation of the client terminates.

"Should know" when used in reference to a lawyer denotes that a reasonable lawyer under the same or similar circumstances would know the matter in question.

"Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

"Substantial" when used in reference to degree or extent denotes a matter of meaningful significance or involvement.

"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 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 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.

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

Comment:

Confirmed in Writing

1. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

2. Whether two or more lawyers constitute a firm depends on the specific facts. For example, two lawyers who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. The terms of an agreement between associated lawyers are relevant in determining whether they are a firm, as is whether they have mutual access to information concerning the clients they serve.

Fraud

3. When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under applicable substantive law and has an intent to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. Silence may be fraudulent if there is a duty to speak and intent to deceive. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

4. Many of these Rules require a lawyer to obtain the informed consent of a client or other person. The communication necessary to obtain such consent will vary according to the rule involved and the circumstances necessitating informed consent. Ordinarily, informed consent will require disclosure of the facts and circumstances giving rise to the situation, an explanation of the material advantages and disadvantages of the proposed course of conduct, and a discussion of the client's or other person's options and alternatives. A lawyer need not inform a client or other

person of facts or implications already known to the client or other person. A lawyer should consider the ability of the client or other person to make a decision and whether to advise that the client or other person should consult with independent counsel.

Screened

5. This definition applies to situations and rules where screening of a personally disqualified lawyer is permitted to remove an imputed conflict of interest.

6. The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm about the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and should acknowledge the obligation not to communicate with the personally disqualified lawyer about the matter. Screening should include firm staff. Additional screening measures that are appropriate for the particular matter will depend on the circumstances.

Rule 1.02 Scope and Objectives of Representation

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Comment:

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Limited Scope of Representation

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6. Unless the representation is terminated as provided in Rule 1.~~15~~16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's representation is limited to a specific matter or matters, the relationship terminates when the matter has been resolved. If a lawyer has represented a client over a substantial period in a variety of matters, the client may sometimes assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice to the contrary. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed

concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

Criminal, Fraudulent and Prohibited Transactions

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8. When a client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer may not reveal the client's wrongdoing, except as permitted or required by Rule 1.05. However, the lawyer also must avoid furthering the client's unlawful purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required. See Rule 1.~~15~~16(a)(1).

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Rule 1.03 Communication

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Comment:

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3. Ordinarily, a lawyer should provide to the client information that would be appropriate for a comprehending and responsible adult. However, communicating such information may be impractical if the client is a child or suffers from diminished capacity; see paragraph 5 and Rule 1.~~16~~17. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.~~12~~13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

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Client with Diminished Capacity

5. If a client appears to suffer from diminished capacity, a lawyer should communicate with any legal representative and seek to maintain reasonable communication with the client, insofar as possible. Even if the client suffers from diminished capacity, it may be possible to maintain some aspects of a normal attorney-client relationship.

The client may have the ability to understand, deliberate upon, and reach conclusions about some matters affecting the client's own well-being. Children's opinions regarding their own custody are given some weight. Regardless of whether a client suffers from diminished capacity, a client should always be treated with attention and respect. See also Rule 1.~~16~~17 and Rule 1.05, Comment 17.

Rule 1.05 Confidentiality of Information

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Comment:

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Discretionary Disclosure Adverse to Client

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16. If the client is an organization, a lawyer also should refer to Rule 1.~~12~~13 in order to determine the appropriate conduct in connection with this Rule.

Client with Diminished Capacity

17. When representing a client who may have diminished capacity, a lawyer should review Rule 1.~~16~~17, which, under limited circumstances, permits a lawyer to disclose confidential information to protect the client's interests.

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Withdrawal

21. If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.~~15~~16(a)(1). After withdrawal, a lawyer's conduct continues to be governed by Rule 1.05. However, the lawyer's duties of disclosure under paragraph (e) of the Rule, insofar as such duties are mandatory, do not survive the end of the relationship even though disclosure remains permissible under paragraphs (6), (7), and (8) if the further requirements of such paragraph are met. Neither this Rule nor Rule 1.~~15~~16 prevents the lawyer from giving notice of the fact of withdrawal, and no rule forbids the lawyer to withdraw or disaffirm any opinion, document, affirmation, or the like.

Other Rules

22. Various other Texas Disciplinary Rules of Professional Conduct permit or require a lawyer to disclose information relating to the representation. See Rules 1.07, 1.~~12~~13, 2.02, 3.03 and 4.01. In addition to these provisions, a lawyer may be obligated by other provisions of statutes or other law to give information about a client. Whether another provision of law supersedes Rule 1.05 is a matter of interpretation beyond the scope of these Rules, but sub-paragraph (c)(4) protects the lawyer from discipline who acts on reasonable belief as to the effect of such laws.

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Rule 1.06 Conflict of Interest: General Rule

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Comment:

Loyalty to a Client

1. Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer must take effective action to eliminate the conflict, including withdrawal if necessary to rectify the situation. See also Rule 1.~~16~~17. When more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by this Rule and Rules 1.05 and 1.09. See also Rule 1.07(c). Under this Rule, any conflict that prevents a particular lawyer from undertaking or continuing a representation of a client also prevents any other lawyer who is or becomes a member of or an associate with that lawyer's firm from doing so. See paragraph (f).

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Rule 1.08. Conflict of Interest: Prohibited Transactions

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

(1) ~~the transaction and terms on which the lawyer acquires the interest~~the terms of the transaction or acquisition are fair and reasonable to the client,

and are fully disclosed and transmitted to the client in a ~~manner which~~writing that can be reasonably understood by the client;

(2) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing to seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek ~~the~~that advice ~~of independent counsel in the transaction~~; and

(3) the client ~~consents in writing thereto~~thereafter provides informed consent in writing to the terms of the transaction or acquisition, and to the lawyer's role in it, including whether the lawyer is representing the client in the transaction.

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Comment:

Business Transactions between Client and Lawyer

~~1. This rule deals with certain transactions that per se involve unacceptable conflicts of interests.~~

~~2. As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. In such transactions a review by independent counsel on behalf of the client is often advisable. Paragraph (a) does not, however, apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others such as banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.~~

~~3. A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide. Paragraph (b) recognizes an exception where the client is a relative of the donee or the gift is not substantial.~~

1. A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property, or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely

related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. This Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.04, although its requirements must be met when the lawyer accepts an interest in the client's business as payment of all or part of a fee. Also, material changes to an existing fee arrangement made during the course of a representation must satisfy this Rule in addition to Rule 1.04. In addition, this Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

2. If the client is not independently represented in the transaction, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable.

3. The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires the lawyer to comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.06. Under Rule 1.06, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.06 will preclude the lawyer from seeking the client's consent to the transaction.

4. If the client is independently represented in the transaction, the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Literary Rights

~~4~~5. An agreement by which a lawyer acquires literary or media rights concerning the conduct of representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (c) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.04 and to paragraph (h) of this Rule.

Person Paying for Lawyers Services

~~5~~6. Paragraph (e) requires disclosure to the client of the fact that the lawyers services are being paid for by a third party. Such an arrangement must also conform to the requirements of Rule 1.05 concerning confidentiality and Rule 1.06 concerning conflict of interest. Where the client is a class, consent may be obtained on behalf of the class by court-supervised procedure. Where an insurance company pays the lawyer's fee for representing an insured, normally the insured has consented to the arrangement by the terms of the insurance contract.

Prospectively Limiting Liability

~~6~~7. Paragraph (g) is not intended to apply to customary qualification and limitations in legal opinions and memoranda.

Acquisition of Interest in Litigation

~~7~~8. This Rule embodies the traditional general precept that lawyers are prohibited from acquiring a proprietary interest in the subject matter of litigation. This general precept, which has its basis in common law champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these Rules, such as the exception for contingent fees set forth in Rule 1.04 and the exception for certain advances of the costs of litigation set forth in paragraph (d). A special instance arises when a lawyer proposes to incur litigation or other expenses with an entity in which the lawyer has a pecuniary interest. A lawyer should not incur such expenses unless the client has entered into a written agreement complying with paragraph (a) that contains a full disclosure of the nature and amount of the possible expenses and the relationship between the lawyer and the other entity involved.

Imputed Disqualifications

~~8~~9. The prohibitions imposed on an individual lawyer by this Rule are imposed by paragraph (i) upon all other lawyers while practicing with that lawyer's firm.

Rule 1.09. Conflict of Interest: Former Client

(a) Without prior consent, 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;

(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.

Comment:

1. Rule 1.09 addresses the circumstances in which a lawyer in private practice, and other lawyers who were, are or become members of or associated with a firm in which that lawyer practiced or practices, may represent a client against a former client of that lawyer or the lawyer's former firm. Whether a lawyer, or that lawyer's present or former firm, is prohibited from representing a client in a matter by reason of the lawyer's successive government and private employment is governed by Rule 1.10 rather than by this Rule.

2. Paragraph (a) concerns the situation where a lawyer once personally represented a client and now wishes to represent a second client against that former client. Whether such a personal attorney-client relationship existed involves questions of both fact and law that are beyond the scope of these Rules. See Preamble: Scope. Among the relevant factors, however, would be how the former representation actually was conducted within the firm; the nature and scope of the former client's contacts with the firm (including any restrictions the client may have placed on the dissemination of confidential information within the firm); and the size of the firm.

~~3. Although paragraph (a) does not absolutely prohibit a lawyer from representing a client against a former client, it does provide that the latter representation is improper if any of three circumstances exists, except with prior consent. The first circumstance is that the lawyer may not represent a client who questions the validity of the lawyer's services or work product for the former client. Thus, for example, a lawyer who drew a will leaving a substantial portion of the testator's property to a designated beneficiary would violate paragraph (a) by representing the testator's heirs at law in an action seeking to overturn the will.~~

~~4. Paragraph (a)'s second limitation on undertaking a representation against a former client is that it may not be done if there is a reasonable probability that the representation would cause the lawyer to violate the obligations owed the former client under Rule 1.05. Thus, for example, if there were a reasonable probability that the subsequent representation would involve either an unauthorized disclosure of confidential information under Rule 1.05(b)(1) or an improper use of such information to the disadvantage of the former client under Rule 1.05(b)(3), that representation would be improper under paragraph (a). Whether such a reasonable probability exists in any given case will be a question of fact.~~

~~4A. The third situation where representation adverse to a former client is prohibited is where the representation involved the same or a substantially related matter. The "same" matter aspect of this prohibition prevents a lawyer from switching sides and representing a party whose interests are adverse to a person who sought in good faith to retain the lawyer. It can apply even if the lawyer declined the representation before the client had disclosed any confidential information. This aspect of the prohibition includes, but is somewhat broader than, that contained in paragraph (a)(1) of this Rule. The "substantially related" aspect, on the other hand, has a different focus. Although that term is not defined in the Rule, it primarily involves situations where a lawyer could have acquired confidential information concerning a prior client that could be used either to that prior client's disadvantage or for the advantage of the lawyer's current client or some other person. It thus largely overlaps the prohibition contained in paragraph (a)(2) of this Rule.~~

~~5. Paragraph (b) extends paragraph (a)'s limitations on an individual lawyer's freedom to undertake a representation against that lawyer's former client to all other lawyers who are or become members of or associated with the firm in which that lawyer is practicing. Thus, for example, if a client severs the attorney-client relationship with a lawyer who remains in a firm, the entitlement of that individual lawyer to undertake a representation against that former client is governed by paragraph (a); and all other lawyers who are or become members of or associated with that lawyer's firm are treated in the same manner by paragraph (b). Similarly, if a lawyer severs his or her association with a firm and that firm retains as a client a person whom the lawyer personally represented while with the firm, that lawyer's~~

~~ability thereafter to undertake a representation against that client is governed by paragraph (a); and all other lawyers who are or become members of or associates with that lawyer's new firm are treated in the same manner by paragraph (b). See also paragraph 19 of the comment to Rule 1.06.~~

~~6. Paragraph (c) addresses the situation of former partners or associates of a lawyer who once had represented a client when the relationship between the former partners or associates and the lawyer has been terminated. In that situation, the former partners or associates are prohibited from questioning the validity of such lawyer's work product and from undertaking representation which in reasonable probability will involve a violation of Rule 1.05. Such a violation could occur, for example, when the former partners or associates retained materials in their files from the earlier representation of the client that, if disclosed or used in connection with the subsequent representation, would violate Rule 1.05(b)(1) or (b)(3).~~

~~7. Thus, the effect of paragraph (b) is to (a) extend any inability of a particular lawyer under paragraph (a) to undertake a representation against a former client to all other lawyers who are or become members of or associated with any firm in which that lawyer is practicing. If, on the other hand, a lawyer disqualified by paragraph (a) should leave a firm, paragraph (c) prohibits lawyers remaining in that firm from undertaking a representation that would be forbidden to the departed lawyer only if that representation would violate subparagraphs (a)(1) or (a)(2). Finally, should those other lawyers cease to be members of the same firm as the lawyer affected by paragraph (a) without personally coming within its restrictions, they thereafter may undertake the representation against the lawyer's former client unless prevented from doing so by some other of these Rules.~~

~~8. Although not required to do so by Rule 1.05 or this Rule, some courts, as a procedural decision, disqualify a lawyer for representing a present client against a former client when the subject matter of the present representation is so closely related to the subject matter of the prior representation that confidences obtained from the former client might be useful in the representation of the present client. See Comment 17 to Rule 1.06. This so-called substantial relationship test is defended by asserting that to require a showing that confidences of the first client were in fact used for the benefit of the subsequent client as a condition to procedural disqualification would cause disclosure of the confidences that the court seeks to protect. A lawyer is not subject to discipline under Rule 1.05(b)(1), (3), or (4), however, unless the protected information is actually used. Likewise, a lawyer is not subject to discipline under this Rule unless the new representation by the lawyer in reasonable probability would result in a violation of those provisions.~~

~~9. Whether the substantial relationship test will continue to be employed as a standard for procedural disqualification is a matter beyond the scope of these Rules. See Preamble: Scope. The possibility that such a disqualification might be sought by~~

~~the former client or granted by a court, however, is a matter that could be of substantial importance to the present client in deciding whether or not to retain or continue to employ a particular lawyer or law firm as its counsel. Consequently, a lawyer should disclose those possibilities, as well as their potential consequences for the representation, to the present client as soon as the lawyer becomes aware of them; and the client then should be allowed to decide whether or not to obtain new counsel. See Rules 1.03(b) and 1.06(b).~~

~~10. This Rule is primarily for the protection of clients and its protections can be waived by them. A waiver is effective only if there is consent after disclosure of the relevant circumstances, including the lawyer's past or intended role on behalf of each client, as appropriate. See Comments 7 and 8 to Rule 1.06.~~

Rule 1.09. Conflict of Interest: Former Client (Clean Form)

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

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

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

(2) about whom the lawyer had acquired information protected by Rules 1.05 and 1.09(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

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

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

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

Comment:

1. After termination of a client-lawyer relationship, a lawyer has certain continuing duties to the former client with respect to confidentiality and conflicts of interest and

thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also, a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same matter. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

2. The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the former client. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

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

based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

4. Paragraph (b) operates to disqualify a lawyer who has moved firms only when the lawyer has actual knowledge of information protected by Rules 1.05 and 1.09(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, the lawyer is not disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

5. Application of paragraph (b) depends on a situation's particular facts, aided by reasonable inferences, deductions, or presumptions about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and may not participate in discussions of the firm's other clients; in the absence of information to the contrary, it should be inferred that such a lawyer is privy to information about the clients actually served but not those of the firm's other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

6. A lawyer changing professional association has a continuing duty to preserve confidentiality of information about a former client. See Rules 1.05 and 1.09(c).

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

8. The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent confirmed in writing under paragraphs (a) and (b). With regard to disqualification of a firm with which a lawyer is or was formerly associated. See Rule 1.10.

Rule 1.10. Imputation of Conflicts of Interest: General Rule (Clean Form)

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.06 or 1.09, unless:

(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.09(a) or (b), and arises out of the disqualified lawyer's association with a prior firm, and:

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

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures.

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

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.05 and 1.09(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.06.

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

Comment:

Principles of Imputed Disqualification

1. Paragraph (a)'s rule of imputed disqualification gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Paragraph (a) is premised on the idea that a firm of lawyers is essentially one lawyer for purposes of client loyalty and that a lawyer is vicariously bound by the obligation of loyalty owed by the other lawyers with whom the lawyer is associated. Paragraph (a)(1) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.09(b), 1.10(a)(2), and 1.10(b).

2. Paragraph (a) does not prohibit representation when client loyalty or protection of confidential information are not at issue. For example, if one lawyer in a firm could not effectively represent a given client because of strong political beliefs, but that lawyer will not work on the case and that lawyer's personal beliefs will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if one lawyer in a law firm owns a party adverse to the law firm's client in a case, and others in the firm would be materially limited in their representation because of loyalty to that lawyer, the lawyer's personal disqualification would be imputed to all others in the firm.

3. Paragraph (a) also does not prohibit representation by others in the law firm if the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation by others in the law firm if a lawyer is prohibited from involvement in a matter because of events that took place before that person became a lawyer, for example, work performed as a law student.

4. Paragraph (b) applies regardless of when the formerly associated lawyer represented the client.

5. Paragraph (c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.06.

6. Paragraph (a)(2) similarly removes imputation, but, unlike paragraph (c), it does so without requiring that there be informed consent by the former client. Instead, it requires that the procedures laid out in paragraphs (a)(2)(i)-(ii) be followed. Lawyers should be aware, however, that, even where screening mechanisms have been adopted, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation.

7. Paragraph (a)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement.

8. The notice required by paragraph (a)(2)(ii) is intended to enable the former client to evaluate and comment upon the effectiveness of the screening procedures.

9. If a lawyer joins a private firm after representing the government, imputation is governed by Rule 1.11, not this Rule.

10. If a lawyer is prohibited from engaging in certain transactions under Rule 1.08, then Rule 1.08(i), not this Rule, determines whether that prohibition also applies to other lawyers associated with the personally prohibited lawyer's firm.

Rule 1.~~10~~11. Successive Government and Private Employment

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Comment:

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6. Paragraph (b)(2) does not require that a lawyer give notice to the governmental agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is, however, required to be given as soon as practicable in order that the government agency or affected person will have a reasonable opportunity to ascertain compliance with this Rule ~~1.10~~ and to take appropriate action if necessary.

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Rule 1.~~11~~12. Adjudicatory Official or Law Clerk

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Comment:

1. This Rule generally parallels Rule 1.~~10~~11. The term personally and substantially signifies that a judge who was a member of a multi-member court and thereafter left judicial office to practice law is not prohibited from representing a client in a matter pending in the court but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in matters where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comments to Rule 1.~~10~~11.

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Rule 1.~~12~~13. Organization as a Client

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(d) Upon a lawyer's resignation or termination of the relationship in compliance with Rule 1.~~15~~16, a lawyer is excused from further proceeding as required by paragraphs (a), (b) and (c), and any further obligations of the lawyer are determined by Rule 1.05.
(e) In dealing with an organizations 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.

Comment:

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Decisions by Constituents

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7. In some cases, it may be reasonably necessary for the lawyer to refer the matter to the organization's highest responsible authority. See paragraph (c)(3). Ordinarily, that is the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere, such as in the independent directors of a corporation. Even that step may be unsuccessful. The ultimate and difficult ethical question is whether the lawyer should circumvent the organization's highest authority when it persists in a course of action that is clearly violative of law or of a legal obligation to the organization and is likely to result in substantial injury to the organization. These situations are governed by Rule 1.05; see paragraph (d) of this Rule. If the lawyer does not violate a provision of Rule 1.02 or Rule 1.05 by doing so, the lawyer's further remedial action, after exhausting remedies within the organization, may include revealing information relating to the representation to persons outside the organization. If the conduct of the constituent of the organization is likely to result in death or serious bodily injury to another, the lawyer may have a duty of revelation under Rule 1.05(e). The lawyer may resign, of course, in accordance with Rule 1.~~15~~16, in which event the lawyer is excused from further proceeding as required by paragraphs (a), (b), and (c), and any further obligations are determined by Rule 1.05.

Relation to Other Rules

8. The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule is consistent with the lawyer's responsibility under Rules 1.05, 1.08, 1.~~15~~16, 3.03, and 4.01. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rule 1.02(c) can be applicable.

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Rule 1.~~13~~14. Conflicts: Public Interests Activities

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Rule 1.~~14~~15. Safekeeping Property

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Rule 1.~~15~~16. Declining or Terminating Representation

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Comment:

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Mandatory Withdrawal

2. A lawyer ordinarily must decline employment if the employment will cause the lawyer to engage in conduct that the lawyer knows is illegal or that violates the Texas Disciplinary Rules of Professional Conduct. Rule 1.~~15~~16(a)(1); cf. Rules 1. 02(c), 3.01, 3.02, 3.03, 3.04, 3.08, 4.01, and 8.04. Similarly, paragraph (a)(1) of this Rule requires a lawyer to withdraw from employment when the lawyer knows that the employment will result in a violation of a rule of professional conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may have made such a suggestion in the ill-founded hope that a lawyer will not be constrained by a professional obligation. Cf. Rule 1.02(c) and (d).

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Client with Diminished Capacity

6. If a client lacks the legal capacity to discharge the lawyer, the lawyer may in some situations initiate proceedings for a conservatorship or similar protection of the client. See Rule 1.~~16~~17.

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Assisting the Client Upon Withdrawal

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10. Other rules, in addition to Rule 1.~~15~~16, require or suggest withdrawal in certain situations. See Rules 1.01, 1.05 Comment 22, 1.06(e) and 1.07(c), 1.~~11~~12(c), 1.~~12~~13(d), and 3.08(a).

Rule 1.~~16~~17. Clients with Diminished Capacity

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Rule 1.18. Duties to Prospective Client (Clean Form)

(a) A person who consults with a lawyer in good faith about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client. A person who communicates with a lawyer for the purpose of disqualifying the lawyer, or for some other purpose that does not include a good faith intention to seek representation by the lawyer, is not a "prospective client" within the meaning of this Rule.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as these Rules would permit or require with respect to a client, or if the information has become generally known or would not be significantly harmful to the former prospective client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is not directly apportioned any part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

Comment:

Client-Lawyer Relationship

1. Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in a lawyer's custody, or rely on a lawyer's advice. A lawyer's consultations with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further.

2. A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. A communication by a person to a lawyer does not constitute a consultation unless the lawyer, either in person or through the lawyer's advertising, specifically requests or invites the submission of information that is not generally known about a particular potential representation. A consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. Such a person communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, and is thus not a "prospective client."

3. It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, with limited exceptions, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

4. In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation.

5. A lawyer may condition a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

6. Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

7. Under paragraph (c), the prohibition in this Rule is imputed to other lawyers, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement.

8. For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.01. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

Rule 2.02 Evaluation for Use by Third Persons

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Comment:

Definition

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4. In addition to serving as advisors or as evaluators, lawyers may be called upon to serve as investigators. When serving as investigator, the identity of the client is critical, because only the client has a confidential relationship with the lawyer. See Rule 1.05. Thus, a lawyer who makes an investigative contact with a non-client in circumstances which might cause the non-client to believe that the lawyer is representing him in the matter should make that non-client aware that rules concerning client loyalty and confidentiality are not applicable. See Rule 1.05. See also Rule 1.~~12~~13(e).

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Rule 3.03 Candor Toward the Tribunal

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Comment:

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Anticipated False Evidence

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6. If the request to place false testimony or other material into evidence came from the lawyer's client, the lawyer also would be justified in seeking to withdraw from the case. See Rules l.~~15~~16(a)(1) and (b)(2), (4). If withdrawal is allowed by the tribunal, the lawyer may be authorized under Rule 1.05(c)(7) to reveal the reasons for that withdrawal to any other lawyer subsequently retained by the client in the matter; but normally that Rule would not allow the lawyer to reveal that information to another person or to the tribunal. If the lawyer either chooses not to withdraw or is not allowed to do so by the tribunal, the lawyer should again urge the client not to offer false testimony or other evidence and advise the client of the steps the lawyer will take if such false evidence is offered. Even though the lawyer does not receive satisfactory assurances that the client or other witness will testify truthfully as to a particular matter, the lawyer may use that person as a witness as to other matters that the lawyer believes will not result in perjured testimony.

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Rule 3.09. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

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

(b) refrain from conducting or assisting 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.

(f) When a prosecutor knows of new and credible information creating a reasonable likelihood that a convicted defendant did not commit an offense for which the defendant was convicted, the prosecutor shall, unless a court authorizes delay,

(1) if the conviction was obtained in the prosecutor's jurisdiction:

(i) promptly disclose that information to:

(A) the defendant;

(B) the defendant's counsel, or if there is none, the indigent defense appointing authority in the jurisdiction, if one exists;

(C) the tribunal in which the defendant's conviction was obtained; and

(D) a statewide entity that examines and litigates claims of actual innocence.

(ii) if the defendant is not represented by counsel, or if unable to determine whether the defendant is represented by counsel, move the court in which the defendant was convicted to determine whether the defendant is indigent and thus entitled to the appointment of counsel.

(iii) cooperate with the defendant's counsel by providing all new information known to the prosecutor as required by the relevant law governing criminal discovery.

(2) if the conviction was obtained in another jurisdiction, promptly disclose that information to the appropriate prosecutor in the jurisdiction where the conviction was obtained.

(g) A prosecutor who concludes in good faith that information is not subject to disclosure under paragraph (f) does not violate this rule even if the prosecutor's conclusion is subsequently determined to be erroneous.

(h) In paragraph (f), unless the context indicates otherwise, "jurisdiction" means the legal authority to represent the government in criminal matters before the tribunal in which the defendant was convicted.

Comment:

Source and Scope of Obligations

1. A prosecutor has the responsibility to see that justice is done, and not simply to be an advocate. ~~This responsibility carries with it a number of specific obligations. Among these is to see that no person is threatened with or subjected to the rigors of a criminal prosecution without good cause. See paragraph (a). In addition, a~~A prosecutor should not initiate or exploit any violation of a suspect's right to counsel, nor should he initiate or encourage efforts to obtain waivers of important pretrial, trial, or post-trial rights from unrepresented persons. ~~See paragraphs (b) and (c). In addition, a prosecutor is obliged to see that the defendant is accorded procedural justice, that the defendant's guilt is decided upon the basis of sufficient evidence, and that any sentence imposed is based on all unprivileged information known to the prosecutor. See paragraph (d). Finally, a~~A prosecutor is obliged by this rule to take reasonable measures to see that persons employed or controlled by him refrain from making extrajudicial statements that are prejudicial to the accused. ~~See paragraph (c) and Rule 3.07.~~ See also Rule 3.03(a)(3), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.04. In many instances, it may be appropriate for a prosecutor to inform his or her supervisor about information related to the duties set down by this Rule.

2. Paragraph (a) does not apply to situations where the prosecutor is using a grand jury to determine whether any crime has been committed, nor does it prevent a prosecutor from presenting a matter to a grand jury even though he has some doubt

as to what charge, if any, the grand jury may decide is appropriate, as long as he believes that the grand jury could reasonably conclude that some charge is proper. A prosecutor's obligations under that paragraph are satisfied by the return of a true bill by a grand jury, unless the prosecutor believes that material inculpatory information presented to the grand jury was false.

3. Paragraph (b) does not forbid the lawful questioning of any person who has knowingly, intelligently and voluntarily waived the rights to counsel and to silence, nor does it forbid such questioning of any unrepresented person who has not stated that he wishes to retain a lawyer and who is not entitled to appointed counsel. See also Rule 4.03.

4. Paragraph (c) does not apply to any person who has knowingly, intelligently and voluntarily waived the rights referred to therein in open court, nor does it apply to any person appearing pro se with the approval of the tribunal. Finally, that paragraph does not forbid a prosecutor from advising an unrepresented accused who has not stated he wishes to retain a lawyer and who is not entitled to appointed counsel and who has indicated in open court that he wishes to plead guilty to charges against him of his pre-trial, trial and post-trial rights, provided that the advice given is accurate; that it is undertaken with the knowledge and approval of the court; and that such a practice is not otherwise prohibited by law or applicable rules of practice or procedure.

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

6. Subparagraph (e) does not subject a prosecutor to discipline for failing to take measures to prevent investigators, law enforcement personnel or other persons assisting or associated with the prosecutor, but not in his employ or under his control, from making extrajudicial statements that the prosecutor would be prohibited from making under Rule 3.07. To the extent feasible, however, the prosecutor should make reasonable efforts to discourage such persons from making statements of that kind.

7. Consistent with Rule 4.02(a), where a defendant is represented by counsel with respect to the matter at issue, prosecutors would satisfy their obligation to notify the defendant by notifying the defendant's counsel.

8. The prosecutor's disclosure obligations under paragraph (f) are commensurate with those created by other law.

Rule 4.01 Truthfulness in Statements to Others

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Comment:

False Statements of Fact

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2. A lawyer violates paragraph (a) of this Rule either by making a false statement of law or material fact or by incorporating or affirming such a statement made by another person. Such statements will violate this Rule, however, only if the lawyer knows they are false and intends thereby to mislead. As to a lawyer's duty to decline or terminate representation in such situations, see Rule 1.~~15~~16.

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Rule 4.03. Dealing With Unrepresented Persons

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

Comment:

1. An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. During the course of a lawyer's representation of a client, the lawyer should not give legal advice to an unrepresented person who may foreseeably become adverse to the client, other than the advice to obtain counsel. With regard to the special responsibilities of a prosecutor, see Rule 3.09.

2. The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any legal advice, apart from the advice to

obtain counsel. Whether a lawyer is giving impermissible legal advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature, and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

3. This Rule maintains the traditional distinction between "legal advice" and "legal information" and does not restrict the latter. "Legal information" includes providing information about court rules, court terminology, and court procedure; directing to legal resources, forms, and referrals; offering educational classes and informational materials; recording on forms verbatim; reviewing forms and other documents for completeness and, if incomplete, stating why the form or document is incomplete; and explaining how to navigate a courthouse, including providing information about security requirements and directional information and explaining how to obtain access to a suit file or request an interpreter.

~~**Rule 5.01. Responsibilities of a Partner or Supervisory Lawyer**~~

~~A lawyer shall be subject to discipline because of another lawyer's violation of these 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 rules knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation.~~

~~**Comment**:~~

~~1. Rule 5.01 conforms to the general principle that a lawyer is not vicariously subjected to discipline for the misconduct of another person. Under Rule 8.04, a lawyer is subject to discipline if the lawyer knowingly assists or induces another to violate these rules. Rule 5.01(a) additionally provides that a partner or supervising lawyer is subject to discipline for ordering or encouraging another lawyer's violation of these rules. Moreover, a partner or supervising lawyer is in a position of authority~~

~~over the work of other lawyers and the partner or supervising lawyer may be disciplined for permitting another lawyer to violate these rules.~~

~~2. Rule 5.01(b) likewise is concerned with the lawyer who is in a position of authority over another lawyer and who knows that the other lawyer has committed a violation of a rule of professional conduct. A partner in a law firm, the general counsel of a government agency's legal department, or a lawyer having direct supervisory authority over specific legal work by another lawyer, occupies the position of authority contemplated by Rule 5.01(b).~~

~~3. Whether a lawyer has direct supervisory authority over the other lawyer in particular circumstances is a question of fact. In some instances, a senior associate may be a supervising attorney.~~

~~4. The duty imposed upon the partner or other authoritative lawyer by Rule 5.01(b) is to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's known violation. Appropriate remedial action by a partner or other supervisory lawyer would depend on many factors, such as the immediacy of the partner's or supervisory lawyer's knowledge and involvement, the nature of the action that can reasonably be expected to avoid or mitigate injurious consequences, and the seriousness of the anticipated consequences. In some circumstances, it may be sufficient for a junior partner to refer the ethical problem directly to a designated senior partner or a management committee. A lawyer supervising a specific legal matter may be required to intervene more directly. For example if a supervising lawyer knows that a supervised lawyer misrepresented a matter to an opposing party in negotiation, the supervisor as well as the other lawyer may be required by Rule 5.01(b) to correct the resulting misapprehension.~~

~~5. Thus, neither Rule 5.01(a) nor Rule 5.01(b) visits vicarious disciplinary liability upon the lawyer in a position of authority. Rather, the lawyer in such authoritative position is exposed to discipline only for his or her own knowing actions or failures to act. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these rules.~~

~~6. Wholly aside from the dictates of these rules for discipline, a lawyer in a position of authority in a firm or government agency or over another lawyer should feel a moral compunction to make reasonable efforts to ensure that the office, firm, or agency has in effect appropriate procedural measures giving reasonable assurance that all lawyers in the office conform to these rules. This moral obligation, although not required by these rules, should fall also upon lawyers who have intermediate managerial responsibilities in the law department of an organization or government agency.~~

~~7. The measures that should be undertaken to give such reasonable assurance may depend on the structure of the firm or organization and upon the nature of the legal work performed. In a small firm, informal supervision and an occasional admonition ordinarily will suffice. In a large firm, or in practice situations where intensely difficult ethical problems frequently arise, more elaborate procedures may be called for in order to give such assurance. Obviously, the ethical atmosphere of a firm influences the conduct of all of its lawyers. Lawyers may rely also on continuing legal education in professional ethics to guard against unintentional misconduct by members of their firm or organization.~~

Rule 5.01. Responsibilities of a Partner or Supervisory Lawyer (Clean Form)

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

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer complies with these rules.

(c) A lawyer shall be responsible for another lawyer's violation of these rules if:

> (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
>
> (2) 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 knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment:

1. Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to these Rules. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers are properly supervised. The fact that a supervised lawyer within a law firm violated a rule does not, without more, indicate that the lawyers who have managerial authority over the firm also violated paragraph (a) if the lawyers with managerial authority over the firm have implemented appropriate compliance controls.

2. Whether particular measures or efforts satisfy the requirements of paragraphs (a) or (b) will depend on the circumstances. The question might depend upon the law firm's structure and the nature of its practice, including the size of the law firm, whether it has more than one office location or practices in more than one jurisdiction, or whether the firm or its partners engage in any ancillary business.

3. A partner, shareholder, or other lawyer in a law firm who has intermediate managerial responsibilities satisfies paragraph (a) if the law firm has a designated managing lawyer charged with that responsibility, or a management committee or other body that has appropriate managerial authority and is charged with that responsibility. For example, the managing lawyer of an office of a multi-office law firm would not necessarily be required to promulgate firm-wide policies intended to reasonably assure that the law firm's lawyers comply with these Rules.

4. Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.04(a). Paragraph (c)(1) provides that lawyers, with or without managerial authority or supervisory authority, may have disciplinary liability for another lawyer's conduct if they order that conduct or, with knowledge of the specific conduct in question, ratify the conduct. Whether a lawyer has ratified conduct will depend on the circumstances. A lawyer may ratify conduct, among other ways, by encouraging, knowingly permitting, or knowingly failing to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation. What constitutes reasonable remedial action would depend on many factors, such as the immediacy of the lawyer's knowledge and involvement, the nature of the action that can reasonably be expected to avoid or mitigate injurious consequences, and the seriousness of anticipated consequences. In some circumstances, it may be sufficient for a junior or supervised lawyer to refer the ethical problem directly to a designated senior lawyer or a management committee.

5. Paragraph (c)(2) defines the duty of a lawyer having managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. A partner or manager in charge of a particular matter ordinarily has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a managing or supervising lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A managing or supervising lawyer is required to intervene to prevent avoidable consequences of misconduct if the managing or supervising lawyer knows that the misconduct occurred. For example, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, both the subordinate and supervisor has a duty to correct the resulting misapprehension.

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

7. Apart from this Rule and Rule 8.04(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate, or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

8. The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by these Rules. See Rule 5.02.

Rule 5.04 Professional Independence of a Lawyer

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Comment:

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6. Rule 5.04(d) forbids a lawyer to practice with or in the form of a professional corporation or association in certain specific situations where erosion of the lawyer's professional independence may be threatened. The danger of erosion of the lawyer's professional independence sometimes may exist when a lawyer practices with associations or organizations not covered by Rule 5.04(d). For example, various types of legal aid offices are administered by boards of directors composed of lawyers and nonlawyers, and a lawyer should not accept or continue employment with such an organization unless the board sets only broad policies and does not interfere in the relationship of the lawyer and the individual client that the lawyer serves. See Rule 1.~~13~~14. Whenever a lawyer is employed by an organization, a written agreement that defines the relationship between the lawyer and the organization and that provides for the lawyers professional independence is desirable since it may serve to prevent misunderstanding as to their respective roles.

Rule 5.05. Unauthorized Practice of Law; Remote Practice of Law

(a) A lawyer shall not:

~~(a)~~(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

~~(b)~~(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) Unless authorized by other law, only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted to practice law in a jurisdiction outside this state, and not disbarred or suspended from practice or the equivalent thereof in any jurisdiction, may provide legal services solely to the lawyer's employer or its organizational affiliates, provided that this jurisdiction does not require pro hac vice admission.

(d) A lawyer who is not admitted to practice in this State, but who is authorized to practice law in one or more jurisdictions, may practice law from a temporary or permanent residence or other location in this jurisdiction, provided that:

> (1) The lawyer does not use advertising, oral representations, business letterhead, websites, signage, business cards, email signature blocks, or other communications to hold themselves out, publicly or privately, as authorized to practice law in this jurisdiction, or as having an office for the practice of law in this jurisdiction;
>
> (2) The lawyer does not solicit or accept residents or citizens of Texas as clients on matters that the lawyer knows primarily require advice on the state or local law of Texas, except as permitted by Texas or federal law; and
>
> (3) When the lawyer knows or reasonably should know that a person with whom the lawyer is dealing mistakenly believes that the lawyer is authorized to practice law in this jurisdiction, the lawyer shall make diligent efforts to correct that misunderstanding.

Comment:

1. Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect prospective clients from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence, responsibility, and accountability.

~~2. Neither statutory nor judicial definitions offer clear guidelines as to what constitutes the practice of law or the unauthorized practice of law. All too frequently, the definitions are so broad as to be meaningless and amount to little more than the statement that the practice of law is merely whatever lawyers do or are traditionally understood to do. The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.~~

~~3~~2. Rule 5.05 does not attempt to define what constitutes the unauthorized practice of law but leaves the definition to judicial development. ~~Judicial development of the concept of law practice should emphasize that the concept is broad enough but only broad enough to cover all situations where there is rendition of services for others that call for the professional judgment of a lawyer and where the one receiving the services generally will be unable to judge whether adequate services are being rendered and is, therefore, in need of the protection afforded by the regulation of the legal profession. Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems and a firm ethical commitment; and the essence of the professional judgment of the lawyer is the lawyer's educated ability to relate the general body and philosophy of law to a specific legal problem of a client.~~

~~4~~3. Paragraph (~~b~~a)(2) ~~of Rule 5.05~~ does not prohibit a lawyer from employing the services of ~~paraprofessionals~~nonlawyers and delegating functions to them. ~~So long as the lawyer supervises the delegated work, and retains responsibility for the work, and maintains a direct relationship with the client, the paraprofessional cannot reasonably be said to have engaged in activity that constitutes the unauthorized practice of law. See Rule 5.03.~~ Likewise, paragraph (~~b~~a)(2) does not prohibit lawyers from providing professional advice and instructions to nonlawyers whose employment requires knowledge of law. For example, claims adjusters, employees of financial institutions, social workers, abstracters, police officers, accountants, and persons employed in government agencies are engaged in occupations requiring knowledge of law; and a lawyer who assists them to carry out their proper functions is not assisting the unauthorized practice of law. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se, since a nonlawyer who represents himself or herself is not engaged in the unauthorized practice of law.

~~5~~4. ~~Authority to engage in the practice of law conferred in any jurisdiction is not necessarily a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where doing so violates the regulation of the practice of law in that jurisdiction. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by individual states. In furtherance of the public interest, lawyers should discourage regulations that unreasonably impose territorial limitations upon the right of a lawyer to handle the legal affairs of a client or upon the opportunity of a client to obtain the services of a lawyer of his or her choice.~~Paragraph (c) does not prohibit a lawyer admitted to practice law in a jurisdiction outside this state from representing clients if authorized by other law. For example, paragraph (c) does not prohibit out-of-state lawyers from practicing law as part of the New Opportunities Volunteer Attorney Pro Bono Program under Article XIII of the State Bar Rules.

5. In representing a client with respect to matters involving the law of a jurisdiction where the lawyer is not licensed, the lawyer may need to consult, with the client's consent, lawyers licensed in that jurisdiction.

Rule 6.01 Accepting Appointments by a Tribunal

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Comment:

Appointment

1. A lawyer may be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services. For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.01, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. Compare Rules 1.06(b), 1.~~15~~16(a)(2), 1.~~15~~16(b)(4). A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust. Compare Rule 1.~~15~~16(b)(6). However, a lawyer should not seek to decline an appointment because of such factors as a distaste for the subject matter or the proceeding, the identity or position of a person involved in the case, the lawyer's belief that a defendant in a criminal proceeding is guilty, or the lawyers belief regarding the merits of a civil case.

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Rule 8.05. Jurisdiction

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Comment:

~~1.~~ This Rule describes those lawyers who are subject to the disciplinary authority of this state. It includes all lawyers licensed to practice here, as well as including lawyers admitted specially for a particular proceeding. This Rule is not intended to have any effect on the powers of a court to punish lawyers for contempt or for other breaches of applicable rules of practice or procedure.

~~2. In modern practice lawyers licensed in Texas frequently act outside the territorial limits or judicial system of this state. In doing so, they remain subject to the governing~~

~~authority of this state. If their activity in another jurisdiction is substantial and continuous, it may constitute the practice of law in that jurisdiction. See Rule 5.05.~~

~~3. If the rules of professional conduct of this state and that other jurisdiction differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than one jurisdiction and these jurisdictions impose conflicting obligations. A related problem arises with respect to practice before a federal tribunal, where the general authority of the state to regulate the practice of law must be reconciled with such authority as federal tribunals may have to regulate practice before them. In such cases, this state will not impose discipline for conduct arising in connection with the practice of law in another jurisdiction or resulting in lawyer discipline in another jurisdiction unless that conduct constitutes professional misconduct under Rule 8.04.~~

~~4. Normally, discipline will not be imposed in this state for conduct occurring solely in another jurisdiction or judicial system and authorized by the rules of professional conduct applicable thereto, even if that conduct would violate these Rules. If, however, the conduct is the solicitation of employment through the use of the public media or a written solicitation that is directed at a prospective client in Texas or is for employment to be performed in Texas, discipline will be imposed if the communication does not comply with Article VII of these Rules. A lawyer admitted to practice in Texas cannot avoid the regulations of Article VII by using the public media in another state or by mailing the written solicitation from another state. This is true without regard to whether the advertisement or solicitation complies with the laws or disciplinary rules of the other state from which it originates.~~

13.05. Termination of Custodianship: A custodianship conducted by an appointed custodian under Rule 13.04 shall terminate upon one or more of the following events:

A. The transfer of all active files and other client property in the possession of the custodian in accordance with the Texas Disciplinary Rules of Professional Conduct, in one or more of the following means:

1. To attorneys assuming the responsibility for ongoing matters; or

2. To the client or client's authorized representative, to the extent that the client is lawfully entitled to such materials.

B. Entry of an order terminating the custodianship from a court with jurisdiction over the practice under Rules 13.02 and 13.03.

C. The return of the appointing attorney to his or her practice prior to completion of the custodianship and resumption of representation of active client matters with the competence to conduct such representation.

In the event there is disagreement about whether the appointing attorney is competent to resume representation of a client matter upon return to the practice, either the appointed custodian or the appointing attorney may petition for a determination and order of a court under Rules 13.02 and 13.03 concerning the resumption of the practice by the appointing attorney and termination of the custodianship. An appointed custodian may also petition the court for an order concerning the proper disposition of dormant or closed client files, distribution of active files for which a client is nonresponsive or cannot be located, and for proper distribution of any client property or other property being held pursuant to a representation by the appointing attorney, including client funds held in an IOLTA account.