

Chapter 2: Law Office Etiquette & Legal Ethics

Chapter Outline:

- ✓ § 2.1 Introduction
- ✓ § 2.2 Telephone Etiquette Guide
- ✓ § 2.3 Legal Ethics
- ✓ § 2.4 Rules of Professional Conduct
- ✓ § 2.5 The Top 10 Ethics Traps

§ 2.1 INTRODUCTION

An attorney may be fined, suspended, or may even lose his or her license for violating the rules of ethics in the applicable jurisdiction. So, how does this apply to staff, including legal secretaries?

The answer is something called the doctrine of respondeat superior. This doctrine establishes that an attorney is liable for the acts of all those who are working under his or her direct control and supervision.

Thus, if a legal secretary commits an act that is unethical while working within the scope of her employment, the court can punish the attorney as though that act was committed by him or herself.

Therefore, take this chapter very seriously.

§ 2.2 TELEPHONE ETIQUETTE GUIDE

ANSWERING CALLS

1. Answer promptly (before third ring if possible)
2. Before picking up the receiver, discontinue any other conversation or activity such as chewing gum, typing, etc. that can be heard by the calling party.
3. Speak clearly and distinctly in a pleasant tone of voice.
4. Use the hold button when leaving the line so that the caller does not accidentally hear conversations being held nearby.
5. When transferring a call, be sure to explain to the caller that you are doing transferring them.
6. Remember that you may be the first and only contact a person may have with your firm and that first impression will stay with the caller long after the call is complete.
7. When the person the caller is asking for is not in, the following responses should be used both to produce privacy of the office staff and to give a more tactful response:

What you mean:	What you tell the Caller:
"He is out."	"He is not in the office at the moment. Would you like to leave a message on his voicemail or may I take a message?"
"I don't know where he is."	"He has stepped out of the office. Would you like to leave a message on his voicemail or may I take a message?"
"He is in the Men's Room."	"He has stepped out of the office. Would you like to leave a message on his voicemail or may I take a message?"
"She hasn't come in yet."	"I expect her shortly. Would you like to leave a message on her voicemail or may I take a message?"
"He took another day off."	"He is out of the office for the day. Would you like to leave a message on his voicemail or may I take a message?"
"He doesn't want to be disturbed."	"He is unavailable at the moment. Would you like to leave a message on his voicemail or may I take a message?"
"She is busy."	"She is unavailable at the moment. Would you like to leave a message on her voicemail or may I take a message?"

TRANSFERRING CALLS

To transfer a call:

1. **Let the caller know** who you are transferring them to.
2. Press the **transfer number**.
3. **Dial the extension** where you are transferring them.
4. **Hang up** – you are done.

To announce a call:

1. Find out the name of the caller and ask what it is in regards to (Why the person is calling).
2. Tell the caller to please hold for a moment.
3. Buzz the person the caller is calling.
4. Wait for the person to answer.
5. Tell the person the name of the caller.
6. Tell the person what the call is in regard to.
7. If the person accepts the call, inform them what line to pick up.
8. If the person does not accept the call, go back to the caller and take a message. (See the suggested response above as to what to tell the caller.)

Good Telephone Procedures

- Remember that you are representing your firm and etiquette is very important. The use of phrases such as “thank you” and “please” are essential in promoting a professional atmosphere.
- Make sure to answer before the third ring. An example of a greeting can be “Good Morning! Smith, Jones, and Smith Law Firm. May I help you?” Use a greeting that is going to give the caller the impression that the firm is professional and pleasant.
- If you are currently on one line and another line rings:
 - Tell the first caller to “Please hold.”
 - Place the caller on hold.
 - Answer the ringing line saying, “Good Morning. Smith, Jones, and Smith Law Firm. Can you please hold?”
 - Place that second caller on hold.
 - Return to the first caller and complete the call.
 - Don’t forget to return to the second caller
 - Tell them, “Thank you for holding. How may I help you?”

When many lines ring at once, write down caller names (or who they are holding for) so you avoid asking for the same info more than once.

TAKING MESSAGES

1. Be prepared with a pen and message pad when you answer the phone.
2. When taking a message be sure to ask for:
 - a. Caller's name (ask for the correct spelling if necessary)
 - b. Caller's phone number and/or extension
 - c. If the caller is calling from another firm or insurance company, ask the case name and/or claim number
 - d. Ask the caller what the call is regarding
3. Repeat the message to the caller, especially confirming phone the telephone number.
4. Be sure to fill in the date, time, and your initials.
5. Place the message slip in the called party's inbox or other conspicuous place that the called party will be able to see as soon as possible.
6. Don't forget to offer to transfer to voice mail.

HANDLING RUDE OR IMPATIENT CALLERS

1. Stay calm. Try to remain diplomatic and polite. Getting angry will only make the caller angrier.
2. Always demonstrate a desire to resolve the problem or conflict.
3. Try to think like the caller. Remember, their issues are important!
4. Offer to have your supervisor or the attorney talk to the caller or have the supervisor return the call.
5. Sometimes the irate caller just wants someone in a supervisory capacity to hear their story, even if they are unable to help.
6. Tell the person what the call is in regard to.

MAKING CALLS

1. When you call someone and they answer the phone, do *not* say, "Who am I speaking with?" without first identifying yourself.
2. Always know and state the purpose of the communication.
3. If you told a person you would call at a certain time, call them as promised.

WHAT TO DO WHEN YOU MAKE A MISTAKE

"To make not mistakes is not in the power of man, but from their errors and mistakes they gain good learned wisdom for the future."

-Plutarch

- Make things right. Your first responsibility is to correct the mistake. The faster you address the problem, the more credible you'll appear to others.
- Take responsibility and apologize. When you make a mistake, you'll usually gain stature by taking ownership and apologizing right away. You won't appear incompetent, only human.
- Let the matter rest. One apology suffices.
- Ask if you can do something else. After resolving your mistake, ask if you can help in any other way.
- Let others know you've learned something. Assure those affected by your error that it won't happen again. If you have learned something from the experience that would help others in the office, share that information.
- Keep records. Keep a record of errors made, the causes, and their solutions.

FREQUENT CALLER COMPLAINTS

First, remember that presentation is everything. Treat your callers as you would hope they would treat you. The way you present yourself on the phone can leave lasting impressions of you and your firm. Common complaints include:

"The telephone rings for a long time before it is answered."

Try to answer calls within 3 rings. Callers become frustrated when they feel that their call is not important to the firm.

"They place me on hold for what seems like hours!"

If you find yourself placing many callers on hold, write down the name and phone number of the caller and a brief description of what they are calling about. If the caller has been holding for an extended period and you know they are likely to be holding longer, pick up the line and say, "I'm sorry, but the person you need to speak with is still unavailable. Do you prefer to continue to hold, or would you like me to take a message or send you to their voicemail?"

"The line is busy for what seems like hours!"

Try to keep calls short. Don't stay on the line longer than necessary.

“They don’t clearly listen to what I am calling for and transfer me to the wrong person.”

Listen to the caller carefully. Before transferring the caller, be sure you understand what the caller wants and who exactly he or she needs to speak with. Repeat what they said back to them. “Let me be sure that I understand your situation.” This gives the caller a chance to clarify the situation, if necessary.

“Sometimes they disconnect me while transferring my call.”

Be careful when transferring a call. Sometimes accidents happen, but be especially mindful at high volume times. In order to transfer a call, first tell the caller where you are transferring him or her, then press the transfer button.

“The person says, ‘Wait’ but then talks to other co-workers without putting me on hold and I can hear their small talk.”

Use the hold button! (Seems obvious, but it is a common problem.) Whenever you are going to leave a caller to check something or to talk to someone else, use the hold button. Callers should never be able to hear the background noise of your office.

“They answer with an aggravated voice, as if I disturbed them by calling.”

It is difficult to stay polite all the time, especially during high volume periods. But again, your disposition reflects on the firm. Try to treat each caller as you would hope to be treated.

SURVIVAL TIPS - BATTLING BURNOUT

1. Never take the work personally. When clients complain, they are not complaining about you personally.
2. Don’t take problems home. Give your work complete attention while you are there, but leave work problems at the firm when you leave.
3. Find ways to reduce stress.
4. Get help from others. Don’t let yourself feel isolated and alone.
5. Remember the good news: You have a job!

At the end of the day, reflect on what you have accomplished. On any given day, there will likely be more positive than negative experiences.

§ 2.3 LEGAL ETHICS

Legal Secretaries must be familiar with the *American Bar Association* (ABA) ethical rules that govern attorneys. Even though the rules do not apply directly to staff of attorneys, the lawyer may be punished if a staff person violates one of the rules as though he had committed the offense her or himself.

In this part of the course, we will discuss the following topics and selected rules. As you read the rules attempt to answer the associated questions.

1. *Scope of representation*

- a. Does an attorney have to limit herself to a specific area of legal representation?

2. *Diligence*

- a. How can a legal secretary put a lawyer in jeopardy of violating this rule? How can he or she help him avoid a potential violation?

3. *Communication*

- a. How can a legal secretary put a lawyer in jeopardy of violating this rule?
- b. How can she help him avoid a potential violation?

4. *Fees*

- a. Can a legal secretary set fees?

5. *Confidentiality*

- a. With whom can a legal secretary discuss an active case from the law firm?
- b. When can she discuss a case that has been finished?
- c. When may a case may be discussed with a spouse?
- d. When can a legal secretary be called upon to testify in a case?

6. *Conflict of interest*

- a. Describe at least one situation where a legal secretary would be pre-empted from a case.
- b. How could this possibly be remedied?

7. *Safekeeping property*

- a. How can a legal secretary put a lawyer in jeopardy of violating this rule?
- b. How can she help him avoid a potential violation?

8. *Expediting litigation*

- a. How can a legal secretary put a lawyer in jeopardy of violating this rule?
- b. How can she help him avoid a potential violation?

9. *Candor*

- a. Does an attorney have to provide information to the court that damages his client.

10. *Person not represented*

- a. How can a legal secretary put a lawyer in jeopardy of violating this rule?
- b. How can she help him avoid a potential violation?

11. *Nonlawyer assistants*

- a. What is a nonlawyer assistant prohibited from doing on behalf of the lawyer?

12. *Unauthorized practice of law*

- a. What constitutes unauthorized practice of law?

13. *Communications about lawyer services*

- a. Can a legal secretary inform callers about a law firm's services?

14. *Advertising & Solicitation*

- a. Which of the above is permissible?
- b. What is the difference?

§ 2.4 RULES OF PROFESSIONAL CONDUCT

NEVADA RULES OF PROFESSIONAL CONDUCT
ADOPTED BY THE SUPREME COURT OF NEVADA

Effective May 1, 2006
and Including
Amendments Through February 1, 2010

TABLE OF CHANGES TO NEVADA RULES OF PROFESSIONAL CONDUCT

Key: "A" amended; "N" added; "R" repealed; "T" transferred.

IN THE SUPREME COURT OF THE STATE OF NEVADA
In the Matter of Amendments to the
SUPREME COURT RULES OF PROFESSIONAL CONDUCT, SCR 150-203.5.

ADKT 370

ORDER REPEALING RULES 150-203.5 OF THE SUPREME COURT RULES AND ADOPTING
THE NEVADA RULES OF PROFESSIONAL CONDUCT

Whereas, this court adopted Rules 150 through 203.5 of the Supreme Court Rules in 1986 based on the Model Rules of Professional Conduct adopted by the American Bar Association in 1983; and

Whereas, the American Bar Association formed the Ethics 2000 Commission in 1997 to review the Model Rules of Professional Conduct and amended the Model Rules of Professional Conduct in 2002 based on recommendations from the Ethics 2000 Commission and again in 2003 based on recommendations from the Task Force on Corporate Responsibility; and

Whereas, at this court's direction, the Board of Governors of the State Bar of Nevada formed the Nevada Ethics 2000 Committee in May 2003 to consider whether Nevada's Rules of Professional Conduct should be amended in whole or in part, using the amended Model Rules as the basis for the Committee's review; and

Whereas, the Committee met numerous times, held two public hearings, and submitted its recommendations to the Board of Governors; and

Whereas, the Board of Governors modified some of the Committee's recommendations and submitted a petition to this court recommending specific amendments to Rules 150 through 203.5 of the Supreme Court Rules; and

Whereas, this court solicited and considered public comment on the recommended amendments; and

Whereas, this court has concluded that amendment of the Nevada Rules of Professional Conduct is warranted; and

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Whereas, it appears to this court that reorganization of the existing Rules of Professional Conduct is necessary to facilitate comparison of the Nevada rules with the Model Rules of Professional Conduct, accordingly,

It Is Hereby Ordered:

1. That Rules 150 through 203.5 of the Supreme Court Rules shall be repealed and Subpart G of Part III of the Supreme Court Rules shall be reserved for future amendments;
2. That the Nevada Rules of Professional Conduct shall be adopted as a set of rules distinct from the Supreme Court Rules and shall read as set forth in Exhibit A;
3. That the recommended amendments to Supreme Court Rule 163 (Organization as Client), renumbered in Exhibit A as Rule 1.13, and the recommended new Supreme Court Rule 199.2 (Sale of Law Practice), reserved in Exhibit A as Rule 1.17, shall be deferred for further consideration by the court;
4. That these rule amendments shall become effective May 1, 2006; and
5. That the clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendments.

Dated this 6th day of February, 2006.

BY THE COURT

NEVADA RULES OF PROFESSIONAL CONDUCT

Rule 1.0. Terminology. As used in these Rules, the following terms shall have the meanings ascribed:

(a) "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.

(b) "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. See paragraph (e) for the definition of "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.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

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

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

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

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

(i) "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.

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

(k) "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.

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

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

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

(o) "Organization" when used in reference to "organization as client" denotes any constituent of the organization, whether inside or outside counsel, who supervises, directs, or regularly consults with the lawyer concerning the organization's legal matters unless otherwise defined in the Rule.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.0 is the same as ABA Model Rule 1.0 except that it includes a definition of "organization."

Rule 1.0A. Guidelines for Interpreting the Nevada Rules of Professional Conduct.

The preamble and comments to the ABA Model Rules of Professional Conduct are not enacted by this Rule but may be consulted for guidance in interpreting and applying the Nevada Rules of Professional Conduct, unless there is a conflict between the Nevada Rules and the preamble or comments. The following guidelines for interpreting and applying the Nevada Rules of Professional Conduct are hereby adopted:

(a) The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role.

(b) For purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as the duty of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

(c) Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

(d) Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.0A is a Nevada-specific Rule. The language at the beginning of the Rule is based on former Supreme Court Rule 150(2). Paragraphs (a)-(d) incorporate language from paragraphs 14, 17, 19, and 20 of the Scope section of the ABA Model Rules.

CLIENT-LAWYER RELATIONSHIP

Rule 1.1. Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.1 (formerly Supreme Court Rule 151) is the same as ABA Model Rule 1.1.

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

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

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

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

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

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.2 (formerly Supreme Court Rule 152) is the same as ABA Model Rule 1.2.

Rule 1.3. Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.3 (formerly Supreme Court Rule 153) is the same as ABA Model Rule 1.3.

Rule 1.4. Communication.

(a) A lawyer shall:

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

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

(3) Keep the client reasonably informed about the status of the matter;

(4) Promptly comply with reasonable requests for information; and

(5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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

(c) Lawyer's Biographical Data Form. Each lawyer or law firm shall have available in written form to be provided upon request of the State Bar or a client or prospective client a factual statement detailing the background, training and experience of each lawyer or law firm.

(1) The form shall be known as the "Lawyer's Biographical Data Form" and shall contain the following fields of information:

(i) Full name and business address of the lawyer.

(ii) Date and jurisdiction of initial admission to practice.

(iii) Date and jurisdiction of each subsequent admission to practice.

(iv) Name of law school and year of graduation.

(v) The areas of specialization in which the lawyer is entitled to hold himself or herself out as a specialist under the provisions of Rule 7.4.

(vi) Any and all disciplinary sanctions imposed by any jurisdiction and/or court, whether or not the lawyer is licensed to practice law in that jurisdiction and/or court. For purposes of this Rule, disciplinary sanctions include all private reprimands imposed after March 1, 2007, and any and all public discipline imposed, regardless of the date of the imposition.

(vii) If the lawyer is engaged in the private practice of law, whether the lawyer maintains professional liability insurance, and if the lawyer maintains a policy, the name and address of the carrier.

(2) Upon request, each lawyer or law firm shall provide the following additional information detailing the background, training and experience of each lawyer or law firm, including but not limited to:

(i) Names and dates of any legal articles or treatises published by the lawyer, and the name of the publication in which they were published.

(ii) A good faith estimate of the number of jury trials tried to a verdict by the lawyer to the present date, identifying the court or courts.

(iii) A good faith estimate of the number of court (bench) trials tried to a judgment by the lawyer to the present date, identifying the court or courts.

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(iv) A good faith estimate of the number of administrative hearings tried to a conclusion by the lawyer, identifying the administrative agency or agencies.

(v) A good faith estimate of the number of appellate cases argued to a court of appeals or a supreme court, in which the lawyer was responsible for writing the brief or orally arguing the case, identifying the court or courts.

(vi) The professional activities of the lawyer consisting of teaching or lecturing.

(vii) The names of any volunteer or charitable organizations to which the lawyer belongs, which the lawyer desires to publish.

(viii) A description of bar activities such as elective or assigned committee positions in a recognized bar organization.

(3) A lawyer or law firm that advertises or promotes services by written communication not involving solicitation as prohibited by Rule 7.3 shall enclose with each such written communication the information described in paragraph (c)(1)(i) through (v) of this Rule.

(4) A copy of all information provided pursuant to this Rule shall be retained by the lawyer or law firm for a period of 3 years after last regular use of the information.

[Added; effective May 1, 2006; as amended; effective November 21, 2008.]

Model Rule Comparison—2007

Rule 1.4 (formerly Supreme Court Rule 154) is the same as ABA Model Rule 1.4, except that the 2007 amendments include language in paragraph (c) that was previously part of repealed Rule 7.2A(a) through (d) and (f) (formerly Supreme Court Rule 196.5) which is Nevada-specific language and has no counterpart in the Model Rules.

Rule 1.5. Fees.

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing, signed by the client, and shall state, in boldface type that is at least as large as the largest type used in the contingent fee agreement:

(1) The method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal;

(2) Whether litigation and other expenses are to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated;

(3) Whether the client is liable for expenses regardless of outcome;

(4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and

(5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.

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

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) A contingent fee for representing a defendant in a criminal case.

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

(1) Reserved;

(2) The client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) The total fee is reasonable.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.5 (formerly Supreme Court Rule 155) is the same as ABA Model Rule 1.5 with two exceptions. First, unlike the Model Rule, paragraph (c) of the Nevada Rule is divided into subparagraphs. The provisions in subparagraphs (4) and (5) are specific to the Nevada Rule; there is no Model Rule counterpart to those provisions. Second, subparagraph (1) of paragraph (e) of the Model Rule has not been adopted. This subparagraph is reserved to maintain consistency with the Model Rules format. Compare Model Rules of Prof'l Conduct R. 1.5(e)(1) (2004) ("the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation").

Rule 1.6. Confidentiality of Information.

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

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

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

(2) To prevent the client from committing a criminal or fraudulent act in furtherance of which the client has used or is using the lawyer's services, but the lawyer shall, where practicable, first make reasonable effort to persuade the client to take suitable action;

(3) To prevent, mitigate, or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services have been or are being used, but the lawyer shall, where practicable, first make reasonable effort to persuade the client to take corrective action;

(4) To secure legal advice about the lawyer's compliance with these Rules;

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

(6) To comply with other law or a court order.

(c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent a criminal act that the lawyer believes is likely to result in reasonably certain death or substantial bodily harm.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.6 (formerly Supreme Court Rule 156) is the same as ABA Model Rule 1.6 with three exceptions. First, paragraph (b)(2) addresses the same subject matter as paragraph (b)(2) of the Model Rule, but the language is Nevada specific and is based on former Supreme Court Rule 156(3)(a). Second, paragraph (b)(3) addresses the same subject matter as paragraph (b)(3) of the Model Rule, but the language is Nevada specific and is the same as former Supreme Court Rule 156(3)(a), with the addition of the word "mitigate." Third, paragraph (c) is Nevada specific and mandates disclosure under circumstances covered by paragraph (b)(1) when a criminal act is involved.

Rule 1.7. Conflict of Interest: Current Clients.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

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

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

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) Each affected client gives informed consent, confirmed in writing.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.7 (formerly Supreme Court Rule 157) is the same as ABA Model Rule 1.7.

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules.

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

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

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(2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

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

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

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

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

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

(1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

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

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

(1) The client gives informed consent;

(2) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) Information relating to representation of a client is protected as required by Rule 1.6.

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

(h) A lawyer shall not:

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

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

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

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

(2) Contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. This paragraph does not apply when the client is an organization.

(k) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person whom the lawyer knows is represented by the other lawyer except upon informed consent by the client after consultation regarding the relationship.

(l) A lawyer shall not stand as security for costs or as surety on any appearance, appeal, or other bond or surety in any case in which the lawyer is counsel.

(m) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs, with the exception of paragraph (j), that applies to any one of them shall apply to all of them.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.8 (formerly Supreme Court Rule 158) is the same as ABA Model Rule 1.8 with three exceptions. First, paragraph (j) is the same as the Model Rule except that its prohibition does not apply when the client is an organization. Second, paragraph (k) is specific to the Nevada Rule, retained from former Supreme Court Rule 158(9), and has no counterpart in the ABA Model Rule. Third, paragraph (l) is specific to the Nevada Rule, retained from former Supreme Court Rule 158(11), and has no counterpart in the ABA Model Rule. Like the ABA Model Rule, the Nevada Rule specifies that the prohibitions in the Rule, except for the prohibition on sexual relationships, also apply to all lawyers associated in a firm with the personally prohibited lawyer. This provision appears in paragraph (m) of the Nevada Rule and paragraph (k) of the Model Rule.

Rule 1.9. Duties to Former Clients.

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

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

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

(2) About whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

(3) 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.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.9 (formerly Supreme Court Rule 159) is the same as ABA Model Rule 1.9.

Rule 1.10. Imputation of Conflicts of Interest.

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.9, or 2.2, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

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

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

(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) Reserved.

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

(1) The personally disqualified lawyer did not have a substantial role in or primary responsibility for the matter that causes the disqualification under Rule 1.9;

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

(3) Written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

Model Rule Comparison—2006

Rule 1.10 (formerly Supreme Court Rule 160) is the same as ABA Model Rule 1.10 with two exceptions. First, the Rule does not include paragraph (d) of the Model Rule. That paragraph is reserved to maintain consistency with the format of the Model Rule. Second, paragraph (e) of the Rule permits screening of lateral attorney hires to avoid imputed disqualification. The Model Rule does not permit screening in that situation.

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

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

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

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

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

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

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

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

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(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) Is subject to Rules 1.7 and 1.9; and

(2) Shall not:

(i) Participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) Negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by, and subject to the conditions stated in, Rule 1.12(b).

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

(1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) Any other matter covered by the conflict of interest rules of the appropriate government agency.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.11 (formerly Supreme Court Rule 161) is the same as ABA Model Rule 1.11.

Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral.

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

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

(2) Written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 1.12 (formerly Supreme Court Rule 162) is the same as ABA Model Rule 1.12.

Rule 1.13. Organization as Client.

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information related to a lawyer's retention by an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c) or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client to the constituent and reasonably attempt to ensure that the constituent realizes that the lawyer's client is the organization rather than the constituent. In cases of multiple representation such as discussed in paragraph (g), the lawyer shall take reasonable steps to ensure that the constituent understands the fact of multiple representation.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

[Added; effective May 1, 2006; as amended; effective January 1, 2007.]

Model Rule Comparison—2006

Rule 1.13 (formerly Supreme Court Rule 163) is the same as ABA Model Rule 1.13 with four exceptions. First, paragraph (b) of the Rule covers the same subject matter as paragraph (b) of the Model Rule but is substantively different from the Model Rule. The Rule includes factors that the lawyer should consider in determining how to proceed under the Rule, specifies that any "measures taken shall be designed to minimize disruption of the organization and the risk of revealing" confidential information "to persons outside the organization," and identifies some specific measures that may be taken. Second, paragraph (c) of the Rule addresses the same subject matter as paragraph (c) of the Model Rule—what the lawyer should do if the lawyer's efforts under paragraph (b) are unsuccessful—but the text is different from the Model Rule. Whereas the Model Rule permits the lawyer to then reveal confidential information in certain circumstances whether or not Rule 1.6 permits the disclosure, the Nevada Rule provides that the lawyer may resign in accordance with Rule 1.16. The Nevada lawyer would only be permitted to make disclosures allowed by Rule 1.6. Third, paragraph (d) of the Model Rule has not been included. The paragraph has been reserved to maintain consistency with the Model Rules format. Fourth, paragraph (e) of the Model Rule has not been included. The paragraph has been reserved to maintain consistency with the Model Rules format.

Model Rule Comparison—2007

Rule 1.13 is amended, effective January 1, 2007, to conform to ABA Model Rule 1.13 with only one exception. Paragraph (f) includes Nevada-specific language. The Model Rule provides that when dealing with an organization's directors, officers, employees, members, shareholders or other constituents, the lawyer has to 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." The former Nevada Rule was consistent with the Model Rule. The amended Nevada Rule, however, departs from the Model Rule on this point by deleting the above-quoted language and requiring that the lawyer explain the identity of the client to the constituent "and reasonably attempt to ensure that the constituent realizes that the lawyer's client is the organization rather than the constituent." The final sentence of the paragraph is also Nevada-specific language.

Rule 1.14. Client With Diminished Capacity.

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

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

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Model Rule Comparison—2006

Rule 1.14 (formerly Supreme Court Rule 164) is the same as ABA Model Rule 1.14.

Rule 1.15. Safekeeping Property.

(a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

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

(e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

Model Rule Comparison—2006

Rule 1.15 (formerly Supreme Court Rule 165) is the same as ABA Model Rule 1.15 with modifications in paragraph (a) to specify that client trust accounts must be designated as such.

Rule 1.16. Declining or Terminating Representation.

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

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

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

(3) The lawyer is discharged.

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

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

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

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

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

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

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

(7) Other good cause for withdrawal exists.

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

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

Model Rule Comparison—2006

Rule 1.16 (formerly Supreme Court Rule 166) is the same as ABA Model Rule 1.16.

Rule 1.17. Sale of Law Practice. A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area or jurisdiction in which the practice has been conducted for a reasonable period of time, in no case less than 6 months, to be set forth in the written agreement for the sale of the practice. In the event a specific term is not set forth in writing, a term of 6 months shall apply for the purposes of this Rule;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) The proposed sale;

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

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

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

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

Model Rule Comparison—2006

Rule 1.17 is a new rule. It is the same as ABA Model Rule 1.17 except for the language added to the end of paragraph (a) of the Nevada Rule regarding the 6-month time period.

Rule 1.18. Duties to Prospective Client.

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

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

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

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(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 apportioned no part of the fee therefrom; and

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

(e) A person who communicates information to a lawyer without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, or for purposes which do not include a good faith intention to retain the lawyer in the subject matter of the consultation, is not a "prospective client" within the meaning of this Rule.

(f) A lawyer may condition conversations 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.

(g) Whenever a prospective client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm:

(1) The lawyer or law firm shall promptly furnish (by mail if requested) the written information described in Rule 1.4(c).

(2) The lawyer or law firm may furnish such additional factual information regarding the lawyer or law firm deemed valuable to assist the client.

(3) If the information furnished to the client includes a fee contract, the top of each page of the contract shall be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" shall appear on the client signature line.

Model Rule Comparison—2007

Rule 1.18 is the same as ABA Model Rule 1.18 except for the addition of two provisions—paragraphs (e) and (f). The first clause of paragraph (e) regarding communications "without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship" is based on comment 2 to the Model Rule. The second clause of paragraph (e) regarding "purposes which do not include a good faith intention to retain the lawyer in the subject matter of the consultation" is Nevada specific. Paragraph (f) is taken from comment 5 to the Model Rule. The 2007 amendment added paragraph (g). The language in this paragraph was previously part of repealed Rule 7.2A(e) (formerly Supreme Court Rule 196.5) which is Nevada-specific language and has no counterpart in the Model Rules.

COUNSELOR

Rule 2.1. Advisor. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Model Rule Comparison—2006

Rule 2.1 (former Supreme Court Rule 167) is the same as ABA Model Rule 2.1.

Rule 2.2. Intermediary.

(a) A lawyer may act as intermediary between clients if:

(1) The lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's consent to the common representation;

(2) The lawyer reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) The lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

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

(c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in subsection 1 is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

Model Rule Comparison—2006

Rule 2.2 (formerly Supreme Court Rule 168) is based on 1983 Model Rule 2.2. The ABA House of Delegates deleted Model Rule 2.2 and incorporated it into the comments to Model Rule 1.7 in 2002. The Rule has been retained in Nevada because Nevada has not adopted comments to the Rules and the Rule provides some guidance in clarifying conflict of interest concerns.

Rule 2.3. Evaluation for Use by Third Persons.

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

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

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

Model Rule Comparison—2006

Rule 2.3 (formerly Supreme Court Rule 169) is the same as ABA Model Rule 2.3.

Rule 2.4. Lawyer Serving as Third-Party Neutral.

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Model Rule Comparison—2006

Rule 2.4 is the same as ABA Model Rule 2.4.

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions. A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 3.1 (formerly Supreme Court Rule 170) is the same as ABA Model Rule 3.1.

Rule 3.2. Expediting Litigation.

(a) A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

(b) The duty stated in paragraph (a) does not preclude a lawyer from granting a reasonable request from opposing counsel for an accommodation, such as an extension of time, or from disagreeing with a client's wishes on administrative and tactical matters, such as scheduling depositions, the number of depositions to be taken, and the frequency and use of written discovery requests.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 3.2 (formerly Supreme Court Rule 171) is the same as ABA Model Rule 3.2 with the exception of paragraph (b). Paragraph (b) is a Nevada-specific provision with no Model Rule counterpart.

Rule 3.3. Candor Toward the Tribunal.

(a) A lawyer shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

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

(3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

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

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

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

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 3.3 (formerly Supreme Court Rule 172) is the same as ABA Model Rule 3.3.

Rule 3.4. Fairness to Opposing Party and Counsel. A lawyer shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

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

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

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

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

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

(1) The person is a relative or an employee or other agent of a client; and

(2) The lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 3.4 (formerly Supreme Court Rule 173) is the same as ABA Model Rule 3.4.

Rule 3.5. Impartiality and Decorum of the Tribunal and Relations With Jury.

(a) A lawyer shall not seek to influence a judge, juror, prospective juror or other official by means prohibited by law.

(b) A lawyer shall not communicate ex parte with a judge, juror, prospective juror or other official except as permitted by law.

(c) Subject to the limitations imposed by this Rule or by law, it is a lawyer's right, after the jury has been discharged, to interview the jurors to determine whether their verdict is subject to any legal challenge. A lawyer shall not communicate with a juror or prospective juror after discharge of the jury if the juror has made known to the lawyer a desire not to communicate, or the communication involves misrepresentation, coercion, duress or harassment. The scope of the interview should be restricted and caution should be used to avoid embarrassment to any juror or to influence his or her action in any subsequent jury service.

(d) A lawyer shall not engage in conduct intended to disrupt a tribunal.

(e) Before the jury is sworn to try the cause, a lawyer may investigate the prospective jurors to ascertain any basis for challenge, provided that a lawyer or the lawyer's employees or independent contractors may not, at any time before the commencement of the trial, conduct or authorize any investigation of the prospective jurors, through any means which are calculated or likely to lead to communication with prospective jurors of any allegations or factual circumstances relating to the case at issue. Conduct prohibited by this Rule includes, but is not limited to, any direct or indirect communication with a prospective juror, a member of the juror's family, an employer, or any other person that may lead to direct or indirect communication with a prospective juror.

Model Rule Comparison—2006

Rule 3.5 (formerly Supreme Court Rule 174) is the same as ABA Model Rule 3.5 with two exceptions. First, paragraph (c) of the Rule addresses the same general subject matter as paragraph (c) of the Model Rule—communications with a juror after discharge of the jury—but the Nevada provision emphasizes the lawyer’s “right . . . to interview the jurors” for certain purposes and prohibits communications with a juror after discharge of the jury only if the juror “has made known to the lawyer a desire not to communicate, or the communication involves misrepresentation, coercion, duress or harassment.” Second, paragraph (e) is Nevada specific and there is no Model Rule counterpart. The language in paragraph (e) is based on former Supreme Court Rule 176(4)(a) and (b).

Rule 3.5A. Relations With Opposing Counsel. When a lawyer knows or reasonably should know the identity of a lawyer representing an opposing party, he or she should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer’s intention to proceed.

Model Rule Comparison—2006

Rule 3.5A (formerly Supreme Court Rule 175) is a Nevada-specific Rule. It has no counterpart in the ABA Model Rules.

Rule 3.6. Trial Publicity.

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

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) The claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) Information contained in a public record;

(3) That an investigation of a matter is in progress;

(4) The scheduling or result of any step in litigation;

(5) A request for assistance in obtaining evidence and information necessary thereto;

(6) A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) In a criminal case, in addition to subparagraphs (1) through (6):

(i) The identity, residence, occupation and family status of the accused;

(ii) If the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) The fact, time and place of arrest; and

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(iv) The identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by that paragraph.

Model Rule Comparison—2006

Rule 3.6 (formerly Supreme Court Rule 177) is the same as ABA Model Rule 3.6.

Rule 3.7. Lawyer as Witness.

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) The testimony relates to an uncontested issue;

(2) The testimony relates to the nature and value of legal services rendered in the case; or

(3) Disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Model Rule Comparison—2006

Rule 3.7 (formerly Supreme Court Rule 178) is the same as ABA Model Rule 3.7.

Rule 3.8. Special Responsibilities of a Prosecutor. The prosecutor in a criminal case shall:

(a) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(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;

(e) Not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) The information sought is not protected from disclosure by any applicable privilege;

(2) The evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) There is no other feasible alternative to obtain the information;

(f) Except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

Model Rule Comparison—2006

Rule 3.8 (formerly Supreme Court Rule 179) is the same as ABA Model Rule 3.8.

Rule 3.9. Advocate in Nonadjudicative Proceedings. A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 3.9 (formerly Supreme Court Rule 180) is the same as ABA Model Rule 3.9.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others. In the course of representing a client a lawyer shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Model Rule Comparison—2006

Rule 4.1 (formerly Supreme Court Rule 181) is the same as ABA Model Rule 4.1.

Rule 4.2. Communication With Person Represented by Counsel. In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Model Rule Comparison—2006

Rule 4.2 (formerly Supreme Court Rule 182) is the same as ABA Model Rule 4.2. While the text of the two rules is identical, the rules are applied differently in two respects. First, Nevada has adopted the managing-speaking agent test to determine which constituents of an organization are covered by the no-contact rule. Palmer v. Pioneer Inn Assocs., Ltd., 118 Nev. 943, 59 P.3d 1237 (2002). The comments to the Model Rule adopt a different test. Model Rules of Prof'l Conduct R. 4.2 cmt. 7 (2004). Second, Nevada has interpreted the Rule to prohibit a lawyer who is representing himself from contacting a represented person in the matter. In re Discipline of Schaefer, 117 Nev. 496, 25 P.3d 191, as modified, 31 P.3d 365 (2001). The comments to the Model Rule suggest that it may not prohibit contact when the lawyer represents himself. See Model Rules of Prof'l Conduct R. 4.2 cmt. 4 (2004) ("Parties to a matter may communicate directly with each other . . ."); Pinsky v. Statewide Grievance Committee, 578 A.2d 1075 (Conn. 1990) (holding that Connecticut rule based on Model Rule 4.2 does not prohibit contact when lawyer represents himself). But see Runsvold v. Idaho State Bar, 925 P.2d 1118 (Idaho 1996) (holding that Idaho rule based on Model Rule 4.2 applies when lawyer represents himself).

Rule 4.3. Dealing With Unrepresented Person. 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.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 4.3 (formerly Supreme Court Rule 183) is the same as ABA Model Rule 4.3.

Rule 4.4. Respect for Rights of Third Persons.

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

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Model Rule Comparison—2006

Rule 4.4 (formerly Supreme Court Rule 184) is the same as ABA Model Rule 4.4.

LAW FIRMS AND ASSOCIATIONS

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

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

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

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

(1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 5.1 (formerly Supreme Court Rule 185) is the same as ABA Model Rule 5.1.

Rule 5.2. Responsibilities of a Subordinate Lawyer.

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Model Rule Comparison—2006

Rule 5.2 (formerly Supreme Court Rule 186) is the same as ABA Model Rule 5.2.

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants. With respect to a nonlawyer employed or retained by or associated with a lawyer:

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

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

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

(1) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Model Rule Comparison—2006

Rule 5.3 (formerly Supreme Court Rule 187) is the same as ABA Model Rule 5.3.

Rule 5.4. Professional Independence of a Lawyer.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) An agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) A lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

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

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

(5) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer.

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

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

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

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

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

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

Model Rule Comparison—2006

Rule 5.4 (formerly Supreme Court Rule 188) is the same as ABA Model Rule 5.4 with one exception. Paragraph (a)(5) of the Rule is Nevada specific and is retained from former Supreme Court Rule 188(1)(b).

Rule 5.5. Unauthorized Practice of Law.

(a) General rule. A lawyer shall not:

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

(2) Assist another person in the unauthorized practice of law.

(b) Exceptions. A lawyer who is not admitted in this jurisdiction, but who is admitted and in good standing in another jurisdiction of the United States, does not engage in the unauthorized practice of law in this jurisdiction when:

(1) The lawyer is authorized to appear before a tribunal in this jurisdiction by law or order of the tribunal or is preparing for a proceeding in which the lawyer reasonably expects to be so authorized;

(2) The lawyer participates in this jurisdiction in investigation and discovery incident to litigation that is pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice;

(3) The lawyer is an employee of a client and is acting on behalf of the client or, in connection with the client's matters, on behalf of the client's other employees, or its commonly owned organizational affiliates in matters related to the business of the employer, provided that the lawyer is acting in this jurisdiction on an occasional basis and not as a regular or repetitive course of business in this jurisdiction;

(4) The lawyer is acting with respect to a matter that is incident to work being performed in a jurisdiction in which the lawyer is admitted, provided that the lawyer is acting in this jurisdiction on an occasional basis and not as a regular or repetitive course of business in this jurisdiction;

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(5) The lawyer is engaged in the occasional representation of a client in association with a lawyer who is admitted in this jurisdiction and who has actual responsibility for the representation and actively participates in the representation, provided that the out-of-state lawyer's representation of the client is not part of a regular or repetitive course of practice in this jurisdiction;

(6) The lawyer is representing a client, on an occasional basis and not as part of a regular or repetitive course of practice in this jurisdiction, in areas governed primarily by federal law, international law, or the law of a foreign nation; or

(7) The lawyer is acting as an arbitrator, mediator, or impartial third party in an alternative dispute resolution proceeding.

(c) Interaction with Supreme Court Rule 42. Notwithstanding the provisions of paragraph (b) of this Rule, a lawyer who is not admitted to practice in this jurisdiction shall not represent a client in this state in an action or proceeding governed by Supreme Court Rule 42 unless the lawyer has been authorized to appear under Supreme Court Rule 42 or reasonably expects to be so authorized.

(d) Limitations.

(1) No lawyer is authorized to provide legal services under this Rule if the lawyer:

(i) Is an inactive or suspended member of the State Bar of Nevada, or has been disbarred or has received a disciplinary resignation from the State Bar of Nevada; or

(ii) Has previously been disciplined or held in contempt by reason of misconduct committed while engaged in the practice of law permitted under this Rule.

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

(i) Establish an office or other regular presence in this jurisdiction for the practice of law;

(ii) Solicit clients in this jurisdiction; or

(iii) Represent or hold out to the public that the lawyer is admitted to practice law in this jurisdiction.

(e) Conduct and discipline. A lawyer admitted to practice in another jurisdiction of the United States who acts in this jurisdiction pursuant to paragraph (b) of this Rule shall be subject to the Nevada Rules of Professional Conduct and the disciplinary jurisdiction of the Supreme Court of Nevada and the State Bar of Nevada as provided in Supreme Court Rule 99.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 5.5 (formerly Supreme Court Rule 189) addresses the same subject matter as ABA Model Rule 5.5, but the text of the Rule is different.

Rule 5.5A. Registration of Private Lawyers Not Admitted to Nevada in Extra-Judicial Matters.

(a) Application of rule.

(1) This Rule applies to a lawyer who is not admitted in this jurisdiction, but who is admitted and in good standing in another jurisdiction of the United States, and who provides legal services for a Nevada client in connection with transactional or extra-judicial matters that are pending in or substantially related to Nevada.

(2) This Rule does not apply to work performed by a lawyer in connection with any action pending before a court of this state, any action pending before an administrative agency or governmental body, or any arbitration, mediation, alternative dispute resolution proceeding, whether authorized by the court, law, rule, or private agreement.

(b) Definitions. For purposes of this Rule, a "Nevada client" is a natural person residing in the State of Nevada, a Nevada governmental entity, or a business entity doing business in Nevada.

(c) Annual report. Notwithstanding any other provision of law, a lawyer who is subject to this Rule shall file an annual report, along with a reporting fee of \$150, with the State Bar of Nevada at its Las Vegas, Nevada, office. The annual report shall encompass January 1 through December 31 of a single calendar year and shall be filed on or before January 31 of the following calendar year. The report shall be on a form approved by the State Bar of Nevada and include the following information:

(1) The lawyers' residence and office address;

(2) The courts before which the lawyer has been admitted to practice and the dates of admission;

(3) That the lawyer is currently a member in good standing of, and eligible to practice law before, the bar of those courts;

(4) That the lawyer is not currently on suspension or disbarred from the practice of law before the bar of any court; and

(5) The nature of the client(s) (individual or business entity) for whom the lawyer has provided services that are subject to this Rule and the number and general nature of the transactions performed for each client during the previous 12-month period. The lawyer shall not disclose the identity of any clients or any information that is confidential or subject to attorney-client privilege.

(d) Failure to file report. Failure to timely file the report described in paragraph (c) of this Rule may be grounds for discipline under applicable Supreme Court Rules and prosecution under applicable state laws. The failure to file a timely report shall result in the imposition of a fine of not more than \$500.

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(e) Discipline. A lawyer who must file an annual report under this Rule shall be subject to the jurisdiction of the courts and disciplinary boards of this state with respect to the law of this state governing the conduct of lawyers to the same extent as a member of the State Bar of Nevada. He or she shall familiarize himself or herself and comply with the standards of professional conduct required of members of the State Bar of Nevada and shall be subject to the disciplinary jurisdiction of the State Bar of Nevada. The Nevada Supreme Court Rules shall govern in any investigation or proceeding conducted by the State Bar of Nevada under this Rule.

(f) Confidentiality. The State Bar of Nevada shall not disclose annual reports filed under this Rule to any third parties unless necessary for disciplinary investigation or criminal prosecution for the unauthorized practice of law.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 5.5A (formerly Supreme Court Rule 189.1) is a Nevada-specific Rule. There is no counterpart in the ABA Model Rules.

Rule 5.6. Restrictions on Right to Practice. A lawyer shall not participate in offering or making:

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

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

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 5.6 (formerly Supreme Court Rule 190) is the same as ABA Model Rule 5.6.

Rule 5.7. Reserved.

Model Rule Comparison—2006

Nevada has not adopted ABA Model Rule 5.7. The Rule is reserved to maintain consistency with the Model Rules format.

PUBLIC SERVICE

Rule 6.1. Pro Bono Publico Service.

(a) Professional responsibility. Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 20 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(1) Provide a substantial majority of the 20 hours of legal services without compensation or expectation of compensation to:

(i) Persons of limited means; or

(ii) A public service, charitable group, or organization in matters that are designed primarily to address the needs of persons of limited means; and

(2) Provide any additional services through:

(i) Delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(ii) Participation in activities for improving the law, the legal system, or the legal profession; or

(iii) Delivery of services in connection with law-related education sponsored by the State Bar of Nevada, the Nevada Bar Foundation, a county bar association, or a court located in Nevada.

(3) As an alternative to rendering at least 20 hours of pro bono publico legal services per year as provided in subparagraphs (1) and (2), a lawyer may discharge the professional responsibility to provide legal services to those unable to pay by:

(i) Providing at least 60 hours of professional services per year at a substantially reduced fee to persons of limited means; or

(ii) Contributing at least \$500 per year to an organization or group that provides pro bono legal services to persons of limited means.

(4) When pro bono legal service is performed for an individual without compensation or at a substantially reduced fee, the fee shall be agreed to in writing at the inception of the representation and refer to this Rule.

(5) The following do not qualify as pro bono legal service under this Rule:

(i) Legal services written off as bad debts;

(ii) Legal services performed for family members; and

(iii) Activities that do not involve the provision of legal services, such as serving on the board of a charitable organization.

(b) Reporting; discharge of professional responsibility.

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(1) All members shall complete an Annual Pro Bono Reporting Form, indicating services performed under this Rule, to be submitted to the state bar annually on a form to be provided by the state bar with the members' fee statements. If a member fails to file the report required by this Rule, the state bar shall notify the member that a fine of \$100 will be imposed unless the member files the report within a specified period of time not less than 30 days after the notice.

(2) The professional responsibility to provide pro bono services as established under this Rule is aspirational rather than mandatory in nature. Accordingly, the failure to render pro bono services will not subject a member to discipline.

(c) Voluntary pro bono plan. The purposes of the voluntary pro bono plan are to make available legal services to those Nevadans who cannot otherwise afford them and to expand the present pro bono programs. To accomplish these goals the following committees are hereby created.

(1) District Court Pro Bono Committees. In each judicial district, the Chief Judge of the District Court shall appoint a Pro Bono Committee consisting of representatives of various members of the bench and bar as well as pro bono services and community organizations of that judicial district. The responsibility of these committees is to determine and address the specific unmet legal needs of that jurisdiction by way of a plan to be submitted to the Supreme Court. Pursuant to paragraph (d) of this Rule, the Pro Bono Committee may establish a foundation. The foundations are authorized to receive funds paid in satisfaction of an order of any court entered in accordance with paragraph (e) of this Rule and to determine the allocation and use of such funds in a manner consistent with this Rule. If no foundation is established, the Pro Bono Committee is authorized to receive such funds and determine their allocation and use in a manner consistent with this Rule.

(2) Access to Justice Section. The board of governors shall have the power to establish a permanent Statewide Access to Justice Section that shall assist in the implementation of this Rule as well as facilitate and support local efforts to improve the public's access to justice. The initial officers of the Access to Justice Section shall be the currently serving officers of the Access to Justice Committee. Thereafter, elections for officers shall be held as provided in the Access to Justice Section's bylaws, as approved by the board of governors. The Access to Justice Section shall be composed of regular members who are licensed to practice law in Nevada and laypersons who may become auxiliary members.

(d) Foundations. A district court Pro Bono Committee may establish a local foundation to actively promote the provision of civil legal services to disadvantaged persons and households within the district. A foundation established pursuant to this Rule shall be created as a Nevada nonprofit corporation and is authorized to:

(1) Actively promote the observance of this Rule within the district;

(2) Receive donations from members of the State Bar of Nevada and monies from the courts as provided in this Rule;

(3) Distribute such funds to providers of pro bono and free or reduced fee civil legal services in the district and to public law libraries;

(4) Develop other new sources of funding and support for delivery of civil legal services;

(5) Support existing legal services and pro bono efforts and foster new projects to broaden the existing range of civil legal services; and

(6) Serve as an educational facilitator to make the community as a whole aware of the efforts being made to provide all Nevadans within the district with full access to the justice system.

(e) Payment of civil sanctions to fund pro bono programs or libraries. Subject to the limitations of this Rule, a court may direct that sanctions or fines imposed under NRS 1.210, NRAP 38, NRCPC 11, JCRCP 11, or like authority be paid to a nonprofit entity or law library specified below. The court's discretion to direct payment of sanctions or fines to a nonprofit entity or law library, however, is limited to civil sanctions imposed against counsel, parties, witnesses or others appearing before the court and expressly excludes sanctions or fines imposed against a defendant in any criminal case. Payment may be directed only to the following:

(1) A nonprofit entity or committee designated pursuant to a voluntary pro bono plan described in paragraph (c) to serve the pro bono and access to justice needs either for the judicial district in which the judicial officer presides or, if serving outside his or her judicial district, where the case is heard; or

(2) A public law library or nonprofit entity associated with a public law library located either in the judicial district in which the judicial officer presides or, if serving outside his or her judicial district, where the case is heard; or

(3) To the Nevada Law Foundation or other statewide nonprofit entity designated by the state bar to serve pro bono and access to justice needs.

(4) The supreme court may also direct payment to such nonprofit entities or public law libraries located in the judicial district in which the matter before the supreme court originated or to any other public law library in the state.

(f) Limitation on authority to specify use of funds. A judicial officer who orders payment of a sanction or fine pursuant to paragraph (e) must not participate in the specific determination of which entity will receive the sanction or fine or of how that sanction or fine will be used by the nonprofit entity or law library designated to receive the funds. The judicial officer may, however, serve on the board or as an officer of a nonprofit entity created pursuant to this Rule, or of a law library or nonprofit entity associated with a law library, provided that he or she does not participate in specific decisions regarding the use of any sanction or fine directed to the nonprofit entity or library by that judicial officer.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 6.1 (formerly Supreme Court Rule 191) addresses the same subject matter as ABA Model Rule 6.1, but the text of the Rule is different.

Rule 6.2. Accepting Appointments. A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) Representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) Representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) The client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 6.2 (formerly Supreme Court Rule 192) is the same as ABA Model Rule 6.2.

Rule 6.3. Membership in Legal Services Organization. A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

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

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

Model Rule Comparison—2006

Rule 6.3 (formerly Supreme Court Rule 193) is the same as ABA Model Rule 6.3.

Rule 6.4. Law Reform Activities Affecting Client Interests. A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Model Rule Comparison—2006

Rule 6.4 (formerly Supreme Court Rule 194) is the same as ABA Model Rule 6.4.

Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs.

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

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

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

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

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 6.5 is the same as ABA Model Rule 6.5.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications Concerning a Lawyer's Services. A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

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

(b) Is likely to create an unjustified or unreasonable expectation about results the lawyer can or has achieved, which shall be considered inherently misleading for the purposes of this Rule, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(c) Compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(d) Contains a testimonial or endorsement which violates any portion of this Rule.

Model Rule Comparison—2007

Rule 7.1 (formerly Supreme Court Rule 195) is the same as ABA Model Rule 7.1 except that paragraphs (b) through (d) are Nevada specific and have no counterpart in the Model Rule. The 2007 amendments changed language in paragraphs (b) and (d) only.

Rule 7.2. Advertising.

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through the public media, such as a telephone directory, legal directory, newspaper or other periodical, billboards and other signs, radio, television and recorded messages the public may access by dialing a telephone number, or through written or electronic communication not involving solicitation as prohibited by Rule 7.3.

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These Rules shall not apply to any advertisement broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and the advertisement is not intended primarily for broadcast or dissemination within the State of Nevada.

(b) Advertisements on the electronic media such as the Internet, television and radio may contain the same factual information and illustrations as permitted in advertisements in the print media. If a person appears as a lawyer in an advertisement for legal services, or under such circumstances as may give the impression that the person is a lawyer, such person must be a member of the State Bar of Nevada, admitted to practice and in good standing before the Supreme Court of Nevada, and must be the lawyer who will actually perform the service advertised or a lawyer associated with the law firm that is advertising. If a person appears in an advertisement as an employee of a lawyer or law firm, such person must be an actual employee of the lawyer or law firm whose services are advertised unless the advertisement discloses that such person is an actor. If an actor appears in any other role not prohibited by these Rules, the advertisement must disclose that such person is an actor.

(c) All advertisements and written communications disseminated pursuant to these Rules shall include the name of at least one lawyer or law firm responsible for their content.

(d) Every advertisement and written communication that indicates one or more areas of law in which the lawyer or law firm practices shall conform to the requirements of Rule 7.4.

(e) Every advertisement and written communication indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall contain the following disclaimer: "You may have to pay the opposing party's attorney fees and costs in the event of a loss."

(f) A lawyer who advertises a specific fee or range of fees shall include all possible terms and fees, and the duration said fees are in effect. Such disclosures shall be presented with equal prominence. For advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(g) A lawyer may make statements describing or characterizing the quality of the lawyer's services in advertisements and written communications. However, such statements are subject to proof of verification, to be provided at the request of the state bar or a client or prospective client.

(h) The following information in advertisements and written communications shall be presumed not to violate the provisions of Rule 7.1:

(1) Subject to the requirements of this Rule and Rule 7.5, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and telephone service hours, and a designation such as "attorney" or "law firm."

(2) Date of admission to the State Bar of Nevada and any other bars and a listing of federal courts and jurisdictions other than Nevada where the lawyer is licensed to practice.

(3) Technical and professional licenses granted by the state or other recognized licensing authorities.

(4) Foreign language ability.

(5) Fields of law in which the lawyer is certified or designated, subject to the requirements of Rule 7.4.

(6) Prepaid or group legal service plans in which the lawyer participates.

(7) Acceptance of credit cards.

(8) Fee for initial consultation and fee schedule, subject to the requirements of paragraphs (e) and (f) of this Rule.

(9) A listing of the name and geographic location of a lawyer or law firm as a sponsor of a public service announcement or charitable, civic or community program or event.

(i) Nothing in this Rule prohibits a lawyer or law firm from permitting the inclusion in law lists and law directories intended primarily for the use of the legal profession of such information as has traditionally been included in these publications.

(j) A copy or recording of an advertisement or written or recorded communication shall be submitted to the State Bar in accordance with Rule 7.2A and shall be retained by the lawyer or law firm which advertises for 4 years after its last dissemination along with a record of when and where it was used.

(k) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these Rules and may pay the usual charges of a lawyer referral service or other legal service organization.

[Added; effective May 1, 2006; as amended; effective September 1, 2007.]

Model Rule Comparison—2007

Rule 7.2 (formerly Supreme Court Rule 196) addresses the same subject matter as ABA Model Rule 7.2, but the text of the Rule is different.

Rule 7.2A. Advertising Filing Requirements.

(a) Filing requirements. A copy or recording of an advertisement or written or recorded communication published after September 1, 2007, shall be submitted to the state bar in both hard copy and electronic format within 15 days of first dissemination along with a form supplied by the state bar. If a published item that was first disseminated prior to September 1, 2007, will continue to be published after this date, then it must be submitted to the state bar on or before September 17, 2007, along with a form supplied by the state bar. The form shall include a provision for members to request a waiver of the electronic filing requirement for good cause.

(b) Failure to file. A lawyer or law firm's failure to file an advertisement in accordance with paragraph (a) is grounds for disciplinary action. In addition, for purposes of disciplinary review pursuant to Supreme Court Rule 106 (privilege and limitation), when a lawyer or law firm fails to file, the 4-year limitation period begins on the date the advertisement was actually known to bar counsel.

Model Rule Comparison—2007

The requirements of original Rule 7.2A paragraphs (a) through (d) and (f) (formerly Supreme Court Rule 196.5) are retained in the Rules of Professional Conduct but are revised and renumbered as Rule 1.4(c), and paragraph (g) is renumbered as Rule 1.18(g); paragraphs (g), (h) and (i) are repealed as redundant under the revised rules. New Rule 7.2A is a Nevada-specific Rule; it has no counterpart in the ABA Model Rules.

Rule 7.2B. Volunteer Advisory Committees; Pre-Dissemination Review.

(a) Standing Lawyer Advertising Advisory Committees. The board of governors shall create two Standing Lawyer Advertising Advisory Committees, one for each district north and south as defined in Supreme Court Rule 100, to review filings submitted under Rule 7.2A and to respond to written requests from an advertising lawyer or law firm voluntarily seeking an advance opinion regarding that lawyer's compliance with the advertising rules.

The board of governors may promulgate bylaws, rules of procedure, and reasonable fees for advance opinions to offset the administrative costs of these committees, as it deems necessary and proper. A state bar staff member or members shall be designated to assist with implementing this Rule, including but not limited to providing administrative support to the standing committees, and receiving and coordinating requests submitted under subparagraph (c)(1) of this Rule.

(1) Committee composition. Each committee shall have a minimum of 5 volunteer members, 4 of whom shall be members of the State Bar of Nevada and 1 of whom may be a non-lawyer. Each committee shall also have a minimum of 5 members to serve as ad hoc or conflict replacements when needed. Members must have a full-time business or residential presence in the respective district.

(i) Appointment. Members shall be appointed by the board of governors and serve 2-year terms, subject to reappointment at the board's discretion. No member shall serve a lifetime total of more than 12 years. Members may be removed by the board of governors for cause.

(ii) Minimum duties. Each committee shall meet at least monthly on a predetermined date, and as often thereafter as necessary, to review all matters before it in a timely fashion. Advance opinions shall be provided within 30 days of submission of the request or sooner. Requests to expedite review of advertisements shall be granted whenever possible within reason. The board of governors may promulgate a procedure and attach an added fee for expedited requests.

(b) Review of filings; advisory opinions to bar counsel. The committee may issue advisory opinions on any advertisement filed with the state bar. If the committee finds that an advertisement does not comply with these Rules, it may issue an advisory opinion to bar counsel within 30 days of its review. The opinion must include the basis for the Committee's finding of noncompliance and a recommendation that bar counsel issue a notice to the lawyer or law firm requesting a correction or withdrawal of the advertisement. If bar counsel accepts the committee's recommendation and issues the notice, the advertising lawyer or law firm has 30 days to respond to bar counsel's notice. Bar counsel may initiate appropriate disciplinary action if the lawyer or law firm fails to file a timely response.

(c) Pre-dissemination review. A lawyer or law firm may file a written request with the state bar seeking an advance opinion on whether a proposed advertisement complies with these Rules. The request shall be made in the form and manner designated by the state bar. Upon receipt of such request, the state bar shall submit it to the appropriate Standing Lawyer Advertising Advisory Committee for its review.

(1) Advance opinion. Within 30 days of submission, the committee shall issue an advance opinion to the lawyer or law firm submitting the request for pre-dissemination review. The opinion shall include a finding of whether the proposed advertisement is in compliance with these Rules. If the Committee finds that the advertisement is not in compliance, then the opinion shall also include the basis for the finding and instructions on how the proposed advertisement can be corrected. Such an adverse opinion must also notify the lawyer or law firm of an opportunity for a hearing on the committee's finding of noncompliance and the procedure for requesting such a hearing.

(2) Appeal. An adverse advance opinion of one committee may be appealed by the requestor in writing to the other committee, which decision shall be controlling.

(d) Limitations; when binding on discipline authority. The committees created under this Rule are primarily dedicated to providing independent, volunteer peer advance opinions to lawyers upon request as a safe-harbor to future disciplinary action only. No request for an advance opinion shall be granted after a disciplinary investigation is commenced on the subject advertisement. In the event an opinion is inadvertently issued by a committee during or after a disciplinary review is in progress, the decision of any disciplinary panel convened pursuant to Supreme Court Rule 105 shall be controlling.

An advance opinion of noncompliance issued under this Rule shall not be binding on any disciplinary panel or bar counsel. An advance finding of compliance is binding on the disciplinary panel and bar counsel in favor of the advertising lawyer provided that the representations, statements, materials, facts and written assurances received in connection therewith are true and not misleading. An advance opinion of compliance constitutes admissible evidence if offered by a party.

(e) Annual report. The board of governors shall file an annual report with the clerk of this court that addresses, among other things, the state bar's efforts to enforce the rules, the operation of the standing committees, the effectiveness of the current rules and any changes to the rules that this court should consider. The first report under this paragraph shall be filed by December 31, 2008, and then annually thereafter.

Model Rule Comparison—2007

New Rule 7.2B is a Nevada-specific Rule; it has no counterpart in the ABA Model Rules.

Rule 7.3. Communications With Prospective Clients.

(a) Direct contact with prospective clients. Except as permitted pursuant to paragraph (d) of this Rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, telegraph or facsimile, by letter or other writing, or by other communication directed to a specific recipient.

(b) Direct or indirect written advertising. Any direct or indirect written mail communication or advertising circular distributed to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, shall contain the disclaimers required by Rule 7.2. The disclaimers shall be in a type size and legibility sufficient to cause the disclaimers to be conspicuous, and in a size at least as large as the largest of any telephone number appearing in the ad.

(c) Additional disclaimer on mailers or written advertisements or communications. Direct or indirect mail envelope, and written mail communications or advertising circulars shall contain, upon the outside of the envelope and upon the communication side of each page of the communication or advertisement, in legible type that is at least twice as large as the largest type used in the body of the communication, in red ink, the following warning:

NOTICE: THIS IS AN ADVERTISEMENT!

(d) Target mail to prospective clients. Written communication directed to a specific prospective client who may need legal services due to a particular transaction or occurrence is prohibited in Nevada within 45 days of the transaction or occurrence giving rise to the communication. After 45 days following the transaction or occurrence, any such communication must comply with paragraphs (b) and (c) of this Rule and must comply with all other Rules of Professional Conduct.

[Added; effective May 1, 2006.]

Model Rule Comparison—2007

Rule 7.3 (formerly Supreme Court Rule 197) addresses the same subject matter as ABA Model Rule 7.3, but the text of the rule is different. The 2007 amendments made no changes to this Rule.

Rule 7.4. Communication of Fields of Practice and Specialization.

(a) A lawyer may communicate that the lawyer is a specialist or expert or that he or she practices in particular fields of law, provided the lawyer complies with this Rule. Nothing in this Rule shall be construed to prohibit communication of fields of practice unless the communication is false or misleading.

(b) Patent law. A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) Admiralty law. A lawyer engaged in admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

(d) Specialist or expert. In addition to the designations permitted by paragraphs (b) and (c) of this Rule, a lawyer may communicate that he or she is a specialist or expert in a particular field of law if the lawyer complies with the provisions of this paragraph.

(1) Certification. The lawyer must be certified as a specialist or expert by an organization that has been approved under Rule 7.4A.

(2) Practice hours; CLE; liability coverage; reporting. The lawyer must meet the following requirements for practice hours devoted to each field of specialization, continuing legal education in each field of specialization, and professional liability coverage:

(i) The lawyer shall have devoted at least one-third of his or her practice to each designated field of specialization for each of the preceding 2 calendar years.

(ii) The lawyer shall have completed 10 hours of accredited continuing legal education in each designated field of specialization of practice during the preceding calendar year. The carry-forward and exemption provisions of Supreme Court Rules 210 and 214 do not apply. In reporting under subparagraph (iv), the lawyer shall identify the specific courses and hours that apply to each designated field of specialization.

(iii) The lawyer shall carry a minimum of \$500,000 in professional liability insurance, with the exception of lawyers who practice exclusively in public law. The lawyer shall provide proof of liability coverage to the state bar as part of the reporting requirement under subparagraph (iv).

(iv) The lawyer shall submit written confirmation annually to the state bar and board of continuing legal education demonstrating that the lawyer has complied with these requirements. The report shall be public information.

(3) Registration with state bar. The lawyer must file a registration of specialty, along with a \$250 fee, with the executive director of the state bar on a form supplied by the state bar. The form shall include attestation of compliance with paragraph (d)(2) for each specialty registered.

(i) Annual renewal. A lawyer registered under this Rule must renew the registration annually by completing a renewal form provided by the state bar, paying a \$250 renewal fee, and providing current information as required under paragraph (d)(2) for each specialty registered. The lawyer must submit the renewal form to the executive director of the state bar on or before the anniversary date of the initial filing of the registration of specialty with the state bar.

(ii) Registration of multiple specialties. A lawyer may include more than one specialty on the initial registration or include additional specialties with the annual renewal without additional charge. Additional specialties added at any other time will be assessed a one-time \$50 processing fee.

(4) Revocation and reinstatement. The board of governors shall establish rules and procedures governing administrative revocation and reinstatement of the right to communicate a specialty for failure to pay the fees set forth in paragraph (d)(3), including reasonable processing fees for late payment and reinstatement.

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(5) Advertising. A lawyer certified as a specialist under this Rule may advertise the certification during such time as the lawyer's certification and the state bar's approval of the certifying organization are both in effect. Advertising by a lawyer regarding the lawyer's certification under this Rule shall comply with Rules 7.1 and 7.2 and shall clearly identify the name of the certifying organization.

(e) Temporary exemption from CLE requirements. The board of governors or its designee may grant a member's request for temporary exemption from completion of the specific continuing legal education requirements imposed by this Rule for exceptional, extreme, and undue hardship unique to the member.

(f) Extension to complete CLE requirements. If a lawyer is unable to complete the hours of accredited continuing legal education during the preceding calendar year as required by this Rule, the lawyer may apply to the board of continuing legal education for an extension of time in which to complete the hours. For good cause the board may extend the time not more than 6 months.

(g) Records. A lawyer who communicates a specialty pursuant to this Rule shall keep time records to demonstrate compliance with paragraph (d)(2). Such records shall be available to the State Bar of Nevada and the board of continuing legal education on request.

(h) Guidelines. The board of governors of the state bar shall be authorized to formulate and publish a set of guidelines to aid members of the state bar in complying with the requirements of this Rule.

(i) Law lists and legal directories. This Rule does not apply to listings placed by a lawyer or law firm in reputable law lists and legal directories that are primarily addressed to lawyers.

[Added; effective May 1, 2006; as amended; effective September 1, 2007.]

Model Rule Comparison—2007

Rule 7.4 (formerly Supreme Court Rule 198) is similar to ABA Model Rule 7.4. Paragraphs (a) through (c) of the Rule are the same as paragraphs (a) through (c) of the Model Rule. Paragraph (d) of the Rule addresses the same subject matter (certification as a specialist) as paragraph (d) of the Model Rule, but the text of the Nevada Rule is different and provides detailed requirements for a lawyer to communicate that he or she is a specialist in a particular field of the law. Paragraphs (e) through (k) are Nevada-specific provisions and have no counterpart in the Model Rule. The 2007 amendments repealed paragraphs (e) and (f) to remove limitations on the communication of fields of practice and renumbered paragraphs (g) through (k) as (e) through (i).

Rule 7.4A. State Bar Approval of Organizations That Certify Lawyers as Specialists. The board of governors of the state bar may, for the purposes of Rule 7.4, approve organizations that certify lawyers as specialists in accordance with this Rule. The board of governors may, in its discretion, appoint a committee to assist the board in implementing a program for the approval of certifying organizations. Any such committee shall be comprised of members of the state bar and such others whom the board of governors deems necessary and proper.

(a) Rules; authority. The board of governors shall implement rules and standards by which the board approves organizations to certify lawyers as specialists in particular areas of law, and which describe the conditions and procedures under which such approval shall be granted, maintained, and revoked. The board shall retain jurisdiction to approve, deny, or revoke approval of a certifying organization under this Rule and may establish fees for administering its duties under this Rule. At its discretion, the board may delegate any other duties associated with approving specialty certification organizations as it deems necessary and proper.

(b) Minimum standards for certifying organizations. To be approved under this Rule, in addition to meeting the standards adopted by the board of governors, an organization that certifies lawyers as specialists in a particular area of the law must make certification available to all lawyers who meet objective and consistently applied standards relevant to the specialty area of law.

(c) Duration of approval; renewal; revocation. The board's approval of the certifying organization shall be valid for a period of 5 years, subject to discretionary renewal upon application by the organization. The board of governors may revoke approval of a certifying organization at any time for violation of this Rule or violation of any other terms and conditions of the approval. Notice of a decision to deny approval, deny renewal, or revoke approval shall be provided to the petitioning organization and an opportunity to appeal provided.

[Added; effective May 1, 2006.]

Model Rule Comparison—2007

Rule 7.4A (formerly Supreme Court Rule 198.5) is a Nevada-specific Rule; it has no counterpart in the ABA Model Rules. The 2007 amendments made no changes to this Rule.

Rule 7.5. Firm Names and Letterheads.

(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction that has registered with the State Bar of Nevada under Rule 7.5A may use the same name in each jurisdiction. Identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. This provision does not apply to a lawyer who takes a brief hiatus from practice to serve as an elected member of the Nevada State Legislature when the legislature is in session.

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

Model Rule Comparison—2007

Rule 7.5 (formerly Supreme Court Rule 199) is the same as ABA Model Rule 7.5 with two exceptions. First, paragraph (b) of the Rule includes a reference to Rule 7.5A, which requires a law firm with offices in more than one jurisdiction to register with the state bar, and is worded slightly different than the Model Rule. Second, the last sentence in paragraph (c) is a Nevada-specific provision that does not appear in the Model Rule. The 2007 amendments made no changes to this Rule.

Rule 7.5A. Registration of Multijurisdictional Law Firms.

(a) Applicability of rule. All law firms having an office in Nevada and in one or more other jurisdictions shall register with the State Bar of Nevada and shall pay an annual fee of \$500 for such registration.

(b) Definitions. For purposes of this Rule:

(1) "Law firm" means a solo practitioner or a group of lawyers.

(2) "Nevada client" means a natural person residing in the State of Nevada, a Nevada governmental entity, or a business entity doing business in Nevada.

(3) "Resident member" means a Nevada-licensed lawyer who maintains a full-time presence in the Nevada office of the multijurisdictional firm.

(c) Procedure and requirements for registering. An application for registration to practice under this Rule, along with the appropriate fee, shall be filed with the executive director of the State Bar of Nevada, on a form supplied or approved by the State Bar of Nevada, at its Las Vegas, Nevada, office. The application shall include the following:

(1) The names and addresses of all lawyers employed by the firm, the jurisdictions in which each lawyer is licensed, and verification that each lawyer is in good standing in the jurisdictions in which each lawyer is licensed;

(2) Any pending disciplinary action or investigation against a lawyer employed by the firm;

(3) The address and telephone number of a permanent office located within the State of Nevada that will be maintained by the firm;

(4) The name, address, and telephone number of a member of the firm who shall be resident in the firm's Nevada office and who shall be the designated agent for service of process in this state. The resident member of the firm in the Nevada office must be an active member in good standing of the State Bar of Nevada; and

(5) A certification that:

(i) The firm will maintain a permanent office in Nevada with a resident member of the firm who is also an active member in good standing of the State Bar of Nevada at all times the firm is practicing in Nevada and will notify the state bar of any change of status or address within 30 days of the change in status or address;

(ii) The firm agrees to disclose in writing to its Nevada clients whether all of its lawyers are licensed to practice in Nevada and, if any of its lawyers are not so-licensed, to disclose what legal work will be performed by lawyers not admitted to practice in this state. Upon request of the State Bar of Nevada, the firm shall provide documentation evidencing its compliance with these disclosure requirements;

(iii) The firm agrees to maintain trust accounts in accordance with Supreme Court Rule 78.5, with all funds arising from any matter in Nevada maintained solely in those accounts. The firm shall identify the financial institution where the trust account has been established; and

(iv) The firm agrees to comply fully with Rule 7.5.

(d) Disposition of application for registration. The executive director of the state bar shall have 30 days from receipt of the application to review the application and determine whether it has been completed and filed in compliance with the requirements of this Rule. Upon approval of the application, the executive director shall notify the applicant and shall also give notice of the registration to the supreme court clerk and the district court clerk for the county in which the law firm's Nevada office is located. If the application is incomplete, the executive director shall give the applicant written notification of the deficiencies in the application. The applicant shall have 30 days from the date of mailing of the notice of the deficiencies to cure the deficiencies and complete the application. If the application is not completed within allotted time, the director shall reject the application.

(e) Application or certificate containing false information. A lawyer who causes to be filed an application or certificate containing false information shall be subject to the disciplinary jurisdiction of the State Bar of Nevada with respect to such action and the firm shall be disqualified from registering to practice in Nevada.

(f) Violation of conditions. If the State Bar of Nevada determines that the firm is in violation of the conditions set forth in paragraph (c)(5) of this Rule, the executive director of the state bar may, upon 20 days' notice, revoke the registration and the right of the firm to practice in Nevada. The executive director shall notify the supreme court clerk and the district court clerk for the county in which the law firm's Nevada office is located of the suspension.

(g) Renewal of registration. On or before the anniversary date of the filing of the application with the State Bar of Nevada, a firm registered under this Rule must renew its registration, providing current information and certification as required under paragraph (c) of this Rule. The renewal shall be accompanied by payment of an annual fee of \$500.

(h) Failure to renew. A law firm registered under this Rule that continues to practice law in Nevada but fails to provide the proper information and certification or pay the renewal fees set forth in paragraph (f) of this Rule shall be suspended from practicing law in Nevada upon expiration of a period of 30 days after the anniversary date. The executive director of the state bar shall notify the firm, the supreme court clerk and the district court clerk for the county in which the law firm's Nevada office is located of the suspension.

(i) Reinstatement. The firm may be reinstated upon the compliance with the requirements of paragraph (f) of this Rule and the payment of a late penalty of \$100. Upon payment of all accrued fees and the late penalty, the executive director of the state bar may reinstate the firm and shall notify the firm, the supreme court clerk and the district court clerk for the county in which the law firm's Nevada office is located of the reinstatement.

(j) Responsibilities of Nevada-licensed members. The members of the firm who are admitted to practice in Nevada shall be responsible for and actively participate as a principal or lead lawyer in all work performed for Nevada clients and for compliance with all state and local rules of practice. It is the responsibility of the Nevada-licensed members of the firm to ensure that any proceedings in this jurisdiction are tried and managed in accordance with all applicable procedural and ethical rules and that out-of-state members of the firm comply with Supreme Court Rule 42 before appearing in any proceedings that are subject to that rule.

(k) Confidentiality. The State Bar of Nevada shall not disclose the application for registration to any third parties unless necessary for disciplinary investigation or criminal prosecution for the unauthorized practice of law.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 7.5A (formerly Supreme Court Rule 199.1) is a Nevada-specific Rule; it has no counterpart in the ABA Model Rules.

Rule 7.6. Reserved.

Model Rule Comparison—2006

Nevada has not adopted ABA Model Rule 7.6. The Rule is reserved to maintain consistency with the Model Rules format.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters. An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) Knowingly make a false statement of material fact; or

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

[Added; effective May 1, 2006.]

Model Rule Comparison—2006

Rule 8.1 (formerly Supreme Court Rule 200) is the same as ABA Model Rule 8.1.

Rule 8.2. Judicial and Legal Officials.

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Model Rule Comparison—2006

Rule 8.2 (formerly Supreme Court Rule 201) is the same as ABA Model Rule 8.2.

Rule 8.3. Reporting Professional Misconduct.

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program, including but not limited to the Lawyers Concerned for Lawyers program established by Supreme Court Rule 106.5.

Model Rule Comparison—2006

Rule 8.3 (formerly Supreme Court Rule 202) is the same as ABA Model Rule 8.3 except that paragraph (c) of the Rule includes a specific reference to the Lawyers Concerned for Lawyers program established by Supreme Court Rule 106.5.

Rule 8.4. Misconduct. It is professional misconduct for a lawyer to:

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

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

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

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

(e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

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

Model Rule Comparison—2006

Rule 8.4 (formerly Supreme Court Rule 203) is the same as ABA Model Rule 8.4.

Rule 8.5. Jurisdiction. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

§ 2.5 THE TOP 10 ETHICS TRAPS

Reprinted from the ABA Journal Website.

Perhaps there was a time when ethics rules for lawyers were straightforward and following them was largely a matter of professional common sense. But it probably ended before your grandfather took down his shingle.

Today it's a much different story. As law practice has become more complex, so have professional conduct rules—at least in their practical application.

"There are still bright lines, but there are lots of ambiguities," says professor Stephen Gillers, who teaches ethics at New York University School of Law. "If you think it's just about the basics, you're on the road to perdition."

With help from Gillers and other experts on professional conduct, the ABA Journal presents its list of the 10 top ethics traps for lawyers. Some of these traps might seem a bit arcane, others obvious. But according to our experts, lawyers in all practice fields fall into them regularly—sometimes with disastrous effects.

[We cite the ABA Model Rules of Professional Conduct, which have been adopted—sometimes with variations—by most states. Lawyers should consult the specific professional conduct rules that apply in their own jurisdictions.]

THE TRAP: Stumbling into a Lawyer-Client Relationship

Phoenix attorney Douglas L. Irish represented Motorola Inc. in a legal dispute over the possible sale of its machine shop to another company.

But M. Dean Corley, a retired Motorola employee who had managed the shop, believed that Irish and his firm, Lewis and Roca, also represented him. And when Corley said as much in a deposition, Irish didn't correct him.

When Motorola threatened to sue Corley for talking to the prospective buyer about working with the company after the sale, he tried to disqualify Irish and his firm from representing Motorola.

Irish responded that he had never represented Corley, but by then it was too late. U.S. Magistrate Judge Lawrence O. Anderson ruled that Corley had shared confidential information with Irish in the belief he was Corley's lawyer, and that Irish had a conflict of interest.

The judge allowed the firm to continue representing Motorola, subject to court-imposed safeguards to protect Corley's in-terests. *Advanced Manufacturing Technologies Inc. v. Motorola Inc.*, No. CIV99-01219PH XMHMLOA (D. Ariz. July 2, 2002).

THE WAY OUT: Don't Be Vague

BY MICHAEL DOWNEY

Virtually everyone is a potential client. If a lawyer isn't careful, someone may inadvertently become an actual client—or think he or she is—often with grave consequences.

While the ABA Model Rules of Professional Conduct are silent on the formation of a lawyer-client relationship, the Restatement (Third) of the Law Governing Lawyers provides in section 14 that the relationship is formed when a person manifests an intent that a lawyer provide legal services, and the lawyer either (a) manifests consent or (b) fails to manifest lack of consent and knows or reasonably should know the person reasonably relied on the lawyer to provide the services.

In other words, if a person asks a legal question, and a lawyer answers or says he or she will look into it, a lawyer-client relationship may result. There's no need to sign an agreement, shake hands, discuss rates or send an engagement letter.

Once a person becomes a client—even inadvertently—it triggers all the obligations of the attorney-client relationship: loyalty, competency, diligence and confidentiality. Further, under ABA Model Rule 1.10, an inadvertent client relationship imputes to the lawyer's firm, not just to the lawyer.

In *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980), the court upheld nearly \$650,000 in judgments against a firm that thought it had declined a representation. The court ruled that an inadvertent lawyer-client relationship had been created, and thus the firm should have advised the plaintiff about the statute of limitations that governed her original claim.

Lawyers who aren't careful to avoid inadvertent clients may face malpractice claims, disqualification—or worse.

Michael Downey is a partner at Hinshaw & Culbertson in St. Louis. He chairs the Ethics and Technology Committee in the ABA Center for Professional Responsibility.

THE TRAP: Overlooking the Marketing Rules

A North Carolina lawyer who markets and provides legal services over the Internet under the name Virtual Law Firm sought the advice of the state bar on how certain professional conduct rules applied to it.

The resulting ethics opinion states that, while there is no prohibition against lawyers using the Internet for communication purposes, "Cyberlawyers have no control over their target audience or where their marketing information will be viewed. Lawyers who appear to be soliciting clients from other states may be asking for trouble."

At a minimum, the Virtual Law Firm must comply with North Carolina's rules for lawyer advertising, the opinion states. That means the site must list an actual office address, identify the lawyer or lawyers primarily responsible for the Web site, and identify the jurisdictional limits of the practice.

"A prudent lawyer may want to research other jurisdictions' restrictions on advertising and cross-border practice to ensure compliance before aggressively marketing and providing legal services via the Internet." *North Carolina State Bar, 2005 Formal Ethics Opinion 10* (Jan. 26, 2006).

THE WAY OUT: Translate for the Internet

BY DIANE L. KARPMAN

Thirty years ago, in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), the U.S. Supreme Court laid out the fundamentals of acceptable lawyer advertising: It must not be false, deceptive or misleading. From these three simple ideas, all 50 states have crafted increasingly byzantine rules.

It is nearly impossible to comply, especially on the Internet. States have different retention policies, label requirements and even rules for type size. Rules regulate content like testimonials, comparisons and monikers ("pit bulls," "heavy hitters"). Recently New York attempted to prohibit pop-ups in electronic advertising. *Alexander v. Cahill*, No. 5:07-CV-117 (N.D.N.Y. July 23, 2007).

These advertising rules for lawyers were designed for print media and never anticipated YouTube or Second Life. Half the lawyer ads on YouTube spoof the profession. But parody and satire are inherently confusing unless you "get it." And poking fun at yourself could be confusing to a consumer.

Reportedly, the Internet is the first place people look for lawyers. How can you take advantage of that amazing marketing potential?

Obviously, comply with your home state's regulations. Include whatever disclaimers should appear. It's a good idea to state that the ad does not create an attorney-client relationship or protect any confidential information until a written agreement is signed. (But see *Barton v. U.S. District Court for the Central District of California*, 410 F.3d 1104 [9th Cir. 2005], for a different approach.) Note that it is void where prohibited by law so you don't run afoul of other state rules.

Remember that *Bates* acknowledges a public need to be able to find a lawyer, obtain accurate information and make informed decisions about legal services. You can truthfully communicate facts about your professional services and still have a sense of humor. But be careful. The father of commercial spam—a lawyer named Laurence Canter—was disbarred for using the technique for (among other things) promoting his immigration practice. You can check it out on the Internet.

Diane L. Karpman is principal at Karpman & Associates in Los Angeles, where her focus is on legal ethics and professional responsibility. She is a member of the ABA Standing Committee on Professionalism.

THE TRAP: My Boss Made Me Do It

When John B. Bowden started work as a managing associate for the Forquer Law Firm in Greenville, S.C., he was in for an unpleasant surprise. Bowden discovered that the firm was inflating government recording fees on settlement statements for HUD-1 real estate transactions. When he asked his boss in the Charlotte, N.C., office about it, Robert Forquer told him the practice was legal and ethical.

Wrong answer. The South Carolina Office of Disciplinary Counsel informed Bowden that the firm's Greenville office failed to keep sufficient records of recording fee charges and failed to track client funds relating to those fees. Even worse, Forquer was apparently using excess fees to cover office expenses and make various payments to himself, according to a ruling by the South Carolina Supreme Court in a disciplinary action against Bowden.

Fortunately for Bowden, he wasn't aware of the misuse of funds. But in an agreement with the ODC that resulted in a reprimand by the court, Bowden acknowledged that it was his duty to tell clients that their bills were inflated and to assure that HUD-1 forms were accurate in closings he supervised. He also acknowledged an ethical duty to assure that other lawyers in his office complied with state ethics rules. *In the Matter of John B. Bowden*, No. 25978 (May 9, 2005).

THE WAY OUT: Report Even if it Hurts You

BY KATHRYN A. THOMPSON

Rule 5.2(a) of the ABA Model Rules of Professional Conduct is emphatic: A lawyer is bound by the ethics rules "notwithstanding that the lawyer acted at the direction of another person." The single exception to this rule is when the lawyer acts in accordance with a supervisory lawyer's "reasonable resolution of an arguable question of professional duty."

It's not enough for a subordinate lawyer to refuse to comply with any unethical directives from supervisors. The lawyer also is bound by ABA Model Rule 8.3 to report the supervisor to an appropriate disciplinary agency if he or she "knows" the other lawyer has committed an ethics violation that raises a "substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer." This requirement applies even when, as in Bowden, the reporting lawyer risks implicating him- or herself in an ethics breach.

There's one more thing: Subordinate lawyers also must contend with their obligations toward affected clients under ABA Model Rule 1.6. That rule prohibits lawyers from revealing information about representations unless clients give informed consent or the information falls within an enumerated exception to the rule. And Model Rule 8.3 specifically states that lawyers are not required to disclose information that is otherwise protected by Rule 1.6.

Thus, in reporting the conduct of a supervisor to a disciplinary authority, the lawyer has to take into account what information must be revealed to support the charge. If the information is confidential for purposes of Model Rule 1.6, client consent is generally required before the information may be revealed. To complicate matters, the standard of disclosure may vary from state to state. A recent ethics opinion in Ohio held that a lawyer had a duty to report any misconduct stemming from unprivileged information. Opinion 2007-01, Ohio Supreme Court Board of Commissioners on Grievances and Discipline (Feb. 9, 2007). By contrast, the broader scope of Model Rule 1.6 protects the disclosure of any information relating to the representation (subject to specific exceptions).

This much is certain: Subordinate lawyers who are dragged into the fray when their bosses flout the ethics rules cannot assume their second-chair status excuses them from their professional obligations.

Kathryn A. Thompson is research counsel for ETHICSearch, a service of the ABA Center for Professional Responsibility.

THE TRAP: Law Firm Breakups

When two lawyers left the Chicago firm of Dowd & Dowd in 1990, it triggered a legal battle that was still going on 14 years later.

The primary issues in the case were whether the departing lawyers breached their fiduciary duties to their former employers by using confidential information to help arrange financing for their new venture and by soliciting one of the firm's clients—a subsidiary of Allstate Insurance Co.—before they resigned.

When the legal dust settled, the Illinois Appellate Court upheld a trial court's assessment of nearly \$2.5 million in compensatory damages, plus \$200,000 in punitive damages.

The appellate court noted that lawyers may use lists of clients expected to leave a firm to help obtain financing for their new practice. But in this case, the court stated in its opinion, "The evidence leads to the reasonable inference that the partners actually solicited the Allstate business, secured a commitment from Allstate for future business, and obtained financing based on that commitment—not a mere expectation." *Dowd & Dowd Ltd. v. Gleason*, 816 N.E.2d 754 (2004); appeal den., 823 N.E.2d 964 (Ill. 2004).

THE WAY OUT: Defer to the Client's Wishes

BY EILEEN LIBBY

When a law firm breaks up, things can be every bit as acrimonious as the worst War of the Roses marital splits. But who gets custody of the clients?

Rule 1.16 of the ABA Model Rules of Professional Conduct gives the client the unfettered right to choose whether to stay with the original firm or move on with the departing lawyer. Model

Rule 1.4 requires that a lawyer keep the client reasonably informed about the status of the matter, but ethics opinions at the state level differ on whether a lawyer is obligated to inform clients that he or she is leaving the firm.

There is no prohibition in the ABA Model Rules against a departing lawyer advising clients that he or she intends to leave the firm. The nature of the communication is the major concern.

Model Rule 7.3 prohibits a lawyer from soliciting a prospective client either in person or by telephone, but it makes an exception for people with whom the lawyer has had a “prior professional relationship.” In ABA Formal Opinion 99-414 (Sept. 8, 1999), the Standing Committee on Ethics and Professional Responsibility explained that such a relationship does not exist where the departing lawyer had merely worked on a matter “in a way that afforded little or no direct contact with the client.”

Pursuant to rules 7.1 and 7.3, communications by the departing lawyer must not be misleading or overreaching. The communications should not urge the client to sever a relationship with the original firm or disparage that firm. The requirement under Rule 7.3 that written communications to prospective clients be labeled as advertising material do not apply, however, to “neutral” communications that merely notify people with whom the departing lawyer has had a prior professional relationship that the lawyer is changing employment and provide the lawyer’s new address.

Ideally, a departing lawyer and the firm can agree on the content of a joint announcement. The Model Rules do not prescribe the timing of such an announcement, nor do they address the substantive law relating to fiduciaries, “winding up” of partnerships, property and unfair competition. Whether the lawyer can take client lists, continuing legal education materials, practice forms or computer files may turn on principles of property and trade secret law.

Eileen Libby is associate ethics counsel in the ABA Center for Professional Responsibility.

THE TRAP: Communicating by E-Mail

A law firm in Massachusetts maintained a Web site that contained a link allowing visitors to send e-mails directly to lawyers at the firm. But the site contained no warning or disclaimer regarding the confidentiality of the information sent.

So when a company—call it ABC Corp.—sent an e-mail to one of the firm’s lawyers regarding a possible legal action against XYZ Corp., the firm suddenly faced an ethical dilemma because it represented XYZ on another matter.

When the firm sought advice from the Massachusetts Bar Association's Committee on Professional Ethics, the news wasn't good. Opinion 07-01 (May 23, 2007).

First, because the firm failed to provide necessary disclaimers, the committee said the lawyer who received the e-mail must maintain the confidentiality of the information furnished by ABC Corp. And second, the firm may not continue representing XYZ Corp. if protecting ABC Corp.'s confidential information materially limits its ability to represent XYZ.

In this case, a marketing tool intended to help attract clients appears to have lost a firm two of them.

THE WAY OUT: Respect Each E-Mail

BY LAWRENCE J. FOX

E-mails: The greatest of modern conveniences. You can write three while billing someone else.

E-mails: The bane of our existence. Step away from your desk or ignore your BlackBerry for an hour, and 15 more have arrived—all demanding instant responses. For further proof of this mixed blessing, consider these e-mail ethics traps waiting for lawyers and clients.

One way to protect the attorney-client privilege is to add the "attorney-client privileged" label to all communications we think are privileged. Of course, most of us automatically label every e-mail we send that way, just to make sure. Even the order to the deli for five corned beef sandwiches with Russian dressing. If you really want to protect an e-mail, don't rely on the automatic legend. Label the message itself. Then a judge will know you actually thought about it.

E-mails permit instantaneous communication. It's way too easy to hit forward and let the whole gang know. They can forward a message on to hundreds more through long strings that add (but rarely subtract) addressees. We know our obligation to protect a client's confidentiality. So share e-mails only with client representatives who need to know. Watch where your privileged message is going, and make sure your clients do, too.

E-mails accumulate by the millions. Destruction is essential so hard drives don't crash under an e-mail tsunami. As a result, companies institute policies for discarding the damned things. But when litigation is credibly threatened, a "hold" must be issued, and the deletions must stop. It's up to lawyers to warn clients when this must occur. The consequences of post-threat destruction are severe indeed, for both client and lawyer.

Lawrence J. Fox is a partner at Drinker Biddle & Reath in Philadelphia. He serves on the ABA Task Force on Attorney-Client Privilege and is a past chair of the Section of Litigation and the Standing Committee on Ethics and Professional Responsibility.

THE TRAP: Failing to Communicate with Clients

In 1997, French lawyer Francois Marland hired the New York City firm of Reid & Priest to represent him in a qui tam action alleging a French bank illegally acquired the assets of an insolvent U.S. insurance company. (The firm, through mergers, became Thelen Reid & Priest; it is now Thelen Reid Brown Raysman & Steiner.) Later, the California Department of Insurance asked the firm to handle its own action against the French bank.

Marland dropped his suit after agreeing to accept a percentage of any fees Thelen Reid got from the California suit. But in 2006, he initiated an arbitration proceeding against the firm claiming that the agreement—under which he received \$19 million—was unfair and unenforceable, and that the firm had rushed him into it. Thelen Reid filed its own action in U.S. District Court seeking to enjoin Marland from pursuing his action.

In February, a district judge ruled that Thelen Reid must produce documents the firm had sought to protect on grounds that they related to its representation of the insurance department.

District Judge Vaughn R. Walker of San Francisco emphasized that the documents related to the firm's representation of Marland, even though they stemmed from internal discussions after the firm asked its own in-house counsel how to proceed. "As a result, all of these documents implicate or affect Marland's interests, and Thelen's fiduciary relationship with Marland as a client lifts the lid on these communications," Walker wrote in his order. *Thelen Reid & Priest v. Marland*, No. C 06-2071 (N.D. Cal. Feb. 21, 2007).

THE WAY OUT: Do More Than Just Return Phone Calls

BY SUSAN R. MARTYN

The duty to communicate is essential to every aspect of the fiduciary duty a lawyer owes to the client. That duty assures the client's interests are properly identified and well-served by the lawyer.

Failure to communicate with one of two clients resulted in malpractice liability in *dePape v. Trinity Health Systems Inc.*, 242 F. Supp. 2d 585 (N.D. Iowa 2003). Failure to clarify the scope of an agent's authority meant professional discipline in *Machado v. Statewide Grievance Committee*, 890 A.2d 622 (Conn. App. 2006). And in *Mari-trans GP Inc. v. Pepper, Hamilton & Scheetz*, 602 A.2d 1277 (Pa. 1992), failure to communicate a conflict to an ex-client resulted in disqualification to prevent disclosure of client confidences.

Remember to initiate communications on six key occasions: (1) When decisions require client consent about the objectives of the representation, such as the decision to settle or appeal. (2) When seeking any waiver of a client fiduciary obligation, especially confidentiality and conflicts of interest. (3) When decisions require client consent about the means to be used to accomplish client objectives, such as whether to litigate, arbitrate or mediate a matter; or whether to stipulate to a set of facts. (4) When clients should be updated on the status of a matter, especially information about developments in the representation itself, such as a serious illness of the lawyer or merger with another firm. (5) When the client requests information. (6) When the client expects assistance the lawyer cannot provide, such as counsel in committing crimes.

The duty to communicate with clients is simple enough. What's difficult is carrying out that duty under many different, and often complex, circumstances.

Susan R. Martyn is a professor at the University of Toledo College of Law. She is a member of the ABA Standing Committee on Ethics and Professional Responsibility.

THE TRAP: Doing Business with Clients

New York City attorney Vincent I. Eke-Nweke drew up a lease for a building on Staten Island. It had some problems—enough for the document to come under the scrutiny of a U.S. District Court.

To start with, the transaction involved Eke-Nweke's own lease of a building owned by one of his clients. But contrary to New York requirements, Eke-Nweke never advised the client to seek independent counsel, nor was the lease written or explained in terms she could reasonably understand.

When client/landlord Judi Anne McMahon filed a lawsuit alleging that Eke-Nweke had breached his fiduciary duty to her, even the judge said he found the terms of the lease hard to follow.

"There is a disparity in bargaining power when an attorney bargains with an unrepresented client, especially where the terms of the contract are so ambiguous that they may not accurately represent the intentions of the parties," wrote Judge Jack B. Weinstein in his Aug. 31 order denying Eke-Nweke's motion to dismiss. *McMahon v. Eke-Nweke*, No. 06-CV-5762 (E.D.N.Y.).

THE WAY OUT: Say It in Writing

BY LYNDA C. SHELBY

A lawyer's fiduciary duty to the client is so essential to their relationship that a lawyer doing business with a client is held to a much higher standard of conduct than anyone else.

Rule 1.8(a) of the ABA Model Rules of Professional Conduct, for instance, imposes strict disclosure requirements on a lawyer who engages in a business transaction with a client.

First, the terms of the transaction must be fair and reasonable for the client; and the lawyer must explain them, in writing, in a way that is reasonably comprehensible to the client.

Second, the lawyer must inform the client, in writing, that it is advisable to consult with another lawyer about the transaction—and give the client a reasonable opportunity to do so.

Third, the client must sign an informed consent to the transaction disclosing that the lawyer is representing the client in the deal.

Failure to comply completely with all these requirements may result in the lawyer's suspension or disbarment—even if the deal is to the client's benefit.

Doing business with a client includes such things as loaning money (a particularly bad idea), obtaining an ownership interest in a corporate client, joining in a business venture for a client, and receiving a security interest in client property to protect your fees.

Exceptions include such transactions as buying dinner at a client's restaurant or obtaining medical services from a client doctor. In *McMahon*, the attorney should have provided the Rule 1.8(a) disclosures to his client because the lease agreement did not constitute a regular commercial transaction.

A lawyer may also be required by Model Rule 5.7 (Responsibilities Regarding Law-Related Services) to make disclosures under Model Rule 1.8(a) if the lawyer refers a client to an ancillary business of the lawyer. Also, making substantive changes to an existing fee arrangement with a client may cause it to be treated as a business transaction. *In re Hefron*, 771 N.E.2d 1157 (Ind. 2002).

One final consideration is that many professional liability policies will not provide coverage if the lawyer has a financial interest in the client. Doing business with clients is like having sex with clients—it just isn't a good idea, even with their consent.

Lynda C. Shely of the Shely Firm in Scottsdale, Ariz., provides professional conduct and risk management services to lawyers. She serves on the Strategic Development Committee for the ABA Center for Professional Responsibility.

THE TRAP: Not Knowing the Ethics Issues

When attorneys Scott G. Lindvall and Patricia J. Clarke worked at Darby & Darby in New York City, their primary task was representing Ivax Corp., one of several defendants in the gabapentin action, a multidistrict patent infringement case. Under a joint defense agreement, they attended confidential meetings with other defendants in which evidence and strategies were discussed in detail.

Lindvall left Darby & Darby in 2003 and ultimately became a partner at Kaye Scholer, another New York firm, and Clarke joined him there. A few months later, Pfizer Corp., a plaintiff in the gabapentin action, notified the court that it intended to replace its attorneys with Kaye Scholer. A defense motion to bar Kaye Scholer followed almost immediately.

Kaye Scholer contended that it had dealt with the potential conflicts before taking on Pfizer, and that Lindvall and Clarke had even obtained a written waiver of conflicts from Ivax.

Not enough, said U.S. District Judge John J. Lifland in Newark, N.J. The joint defense agreement had created an implied attorney-client relationship between Lindvall and Clarke and all the other defendants in the gabapentin action, so conflict waivers should have been sought from those other defendants, too. Lifland barred Kaye Scholer from representing Pfizer. *In re Gabapentin Patent Litigation*, 407 F. Supp. 2d 607 (D.N.J. 2005).

THE WAY OUT: Know—or Learn—the Law

BY STEPHEN GILLERS

If I had a quarter for every time I heard about a firm that got itself in a pickle because of a failure to anticipate conflicts, I could buy dinner for eight at a top Manhattan restaurant. With wine. Good wine.

Kaye Scholer did try to plan ahead in the gabapentin action, and there are good arguments why consent from Ivax should have sufficed. I think Judge Lifland's decision to find an implied attorney-client relationship between Lindvall and Clarke and the other defendants was wrong. But he's the judge, and his ruling did not come out of left field. It was foreseeable.

The trouble is—and here’s the lesson—lawyers may assume they know more than they do about complex legal ethics questions like this one, and they make fatal errors as a result. They would never do that in any other field of law. Would an antitrust lawyer who ran into a complicated intellectual property question make an educated guess at the answer? No! He or she would consult an IP lawyer or do some serious research. Doing neither would be malpractice.

Yet for some reason, lawyers assume that when the specialized field is lawyer ethics, they’ll reach the right answer intuitively. Based on what? The legal ethics class they took 10 or 20 years ago in law school?

Maybe correct intuitive answers were possible in the 1970s or ‘80s. But those days are long gone. The law and ethics of lawyering is a specialty and, like other fields, it is constantly changing. When the consequences of error can be unpleasant (or worse) for you or your client, and you haven’t got the time or inclination to research a question, consult an expert.

Stephen Gillers is a professor at New York University School of Law. He chairs the Policy Implementation Committee in the ABA Center for Professional Responsibility.

THE TRAP: Fee Agreements

Harry Issler was listed as counsel of record on a medical-malpractice case, even though he referred the case to Greg Starr. The two New York lawyers entered into a fee-sharing agreement in 1999, when they shared office space. Their work relationship soured in 2001, when Issler lost his lease and would not sublet space to Starr at his new office.

The malpractice case settled for \$135,000 and Issler claimed half the fee. Starr argued that the cli-ents had named him sole counsel in the case, and that Issler should receive a quantum meruit amount that he estimated at only 4 percent of the fee.

Judge Dianne T. Renwick rejected Starr’s quantum meruit claim because he offered no proof that the substitution of attorneys had met statutory requirements that Issler consent or that a court order be obtained.

The court also rejected Starr's argument that the fee-sharing agreement violated the New York Code of Professional Responsibility. The state code says, in effect, that unaffiliated lawyers may share fees proportional to their actual work or by terms of a written client agreement assigning "joint responsibility."

Renwick held that, under the New York ethics code, joint responsibility essentially means that the referring lawyer—in this case, Issler—assumes joint and several liability for any act of malpractice, even if he or she has no ethical obligation to supervise the work of the lawyer to whom the case was referred. The judge ruled that the language of their fee agreement met that requirement.

THE WAY OUT: Be Clear on Responsibilities

BY PETER H. GERAGHTY

Like New York's code, ABA Model Rule 1.5 permits lawyers who are not in the same firm to share fees in either of two ways: first, on the basis of the amount of work each lawyer performs in the matter; or second, if by written agreement with the client, each lawyer assumes joint responsibility for the matter.

The Comment to Rule 1.5 states: "Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership."

The ABA House of Delegates added that definition to the Comment in 2002 to clarify that lawyers who share fees on a joint responsibility basis in effect become partners for purposes of the representation, and assume financial, legal and ethical responsibility for the matter that would also presumably include a duty to supervise under Model Rule 5.1 See also, *ABA Informal Opinion 85-1514* (1985), which is still widely used.

State ethics opinions do not agree on what is meant by joint responsibility. The State Bar of Wisconsin (Opinion E-00-01) found in 2000 that the referring lawyer has a duty to make competent referrals, must remain sufficiently aware of the performance of the lawyer to whom the matter was referred, and must assume financial responsibility for the matter. But Arizona Bar Association Opinion 04-02 (2004) states that the requirement is satisfied if a lawyer assumes financial responsibility for any malpractice.

Before agreeing to share fees on a joint responsibility basis, lawyers would be well-advised to check their jurisdictions' rules of professional conduct, ethics opinions and case law to fully understand the extent of their ethical and legal obligations. Peter H. Geraghty is director of ETHICSearch in the ABA Center of Professional Responsibility.

THE TRAP: Ending the Lawyer-Client Relationship

When lawyers at Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim in Tacoma, Wash., were asked to help represent Rabanco Ltd. employees in a suit against the company, they jumped right in. They did not think an earlier representation of a wholly owned subsidiary of the company disqualified them.

But a U.S. District Court in Seattle saw things differently. Judge Marsha J. Pechman granted the defendants' motion that the firm be disqualified.

The firm argued no one from Rabanco nor its subsidiaries had contacted it in three-plus years. But Pechman noted that the firm had open files on matters involving the Rabanco family of companies, was listed as receiving notices in a settlement agreement, and continued to store documents from the earlier case. *Jones v. Rabanco Ltd.*, No. C03-3195P (W.D. Wash. Aug. 3, 2006).

THE WAY OUT: Don't Rely on Your Assumptions

BY STEPHEN GILLERS

Jones v. Rabanco is a pretty ag-gressive opinion. Many courts would have ruled differently. Lawyers can do much to insulate themselves from decisions like this one, but only if they know how the rules treat current and former clients differently, and they inform the client that it has moved from the first category to the second if the transition is not clear.

First, the conflict rules are less strict in defining the duty owed to former clients. Most important, under Rule 1.9(a) of the ABA Model Rules of Professional Conduct, the duty to former clients exists only to avoid subsequent adverse representation in substantially related matters. On the other hand, a firm may not ordinarily be adverse to a current client on any matter without informed consent. See ABA Model Rule 1.7(a)(2).

Second, Model Rule 1.4, along with fiduciary duty and malpractice law, requires lawyers to keep current clients informed about factual and legal developments related to their matters. This duty is not ordinarily owed to former clients unless the lawyer promises otherwise. See *Lama Holding Co. v. Shearman & Sterling*, 758 F. Supp. 159 (S.D.N.Y. 1991), in which the court refused to dismiss a complaint alleging that the firm failed to apprise a former client of tax law changes despite a promise to do so.

Of course, whether a client is current or former is not always within your power to control. You can't drop a client simply to enjoy the more generous former-client conflict rules. But if the work is done, the firm can make that fact clear to the client, rather than leave things vague.

When I explain this to lawyers, they often admit that they prefer to leave things vague because that means the client will likely think of them as "my lawyer," which increases the chance for new work. Fine. That's a business decision, but it comes at a price.

