



The State Bar of California

Task Force on Access Through Innovation of Legal Services

To: ATILS Task Force
From: Staff
Date: August 5, 2019
Re: C.1. Potential Rules of Professional Conduct amendments necessary to optimize the access and innovation benefits of permitting Limited License Legal Technicians ("LLTs") to render legal services

Rules/Ethics Opinions subcommittee to begin thinking about the type of RPC amendments that might be needed to optimize the access and innovation benefit of permitting LLTs to render legal services.

- [Utah Proposed Rules of Professional Conduct Affected by Licensed Paralegal Practitioners](#)
- [Washington State Limited License Legal Technician Rules of Professional Conduct \(LLT RPC\)](#)

**COMMENTS TO RULES OF PROFESSIONAL CONDUCT
AFFECTED BY LICENSED PARALEGAL PRACTITIONERS (NO COMMENTS)**

Following the recent enactment of rules authorizing licensed paralegal practitioners, the Rules of Professional Conduct have been amended to address interactions between lawyers and licensed legal practitioners. “Legal professional” is now the umbrella term for lawyers and licensed paralegal practitioners.

RPC01.00. Terminology.

RPC01.07. Conflict of Interest: Current Clients.

RPC01.10. Imputation of Conflicts of Interest: General Rule.

RPC01.11. Special Conflicts of Interest for Former and Current Government Employees.

RPC01.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral.

RPC01.18. Duties to Prospective Client.

RPC02.04. Lawyer Serving as Third-Party Neutral.

RPC03.03. Candor toward the Tribunal.

RPC03.05. Impartiality and Decorum of the Tribunal.

RPC04.02. Communication with Persons Represented by Counsel.

RPC05.01. Responsibilities of Partners, Managers, and Supervisory Lawyers.

RPC08.03. Reporting Professional Misconduct.

Summary: There have been no comments made on these rules as of January 10, 2019. Although the comment period lasts through January 27, 2019, we do not expect that they will receive any hereafter. It would be appropriate for the committee to recommend the rules’ adoption to the Utah Supreme Court.

Rule 1.0. Terminology.

(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 (f) 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) "Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(d) "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.

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

(f) "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.

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

(h) "Legal Professional" includes a lawyer and a licensed paralegal practitioner.

(i) "Licensed Paralegal Practitioner" denotes a person authorized by the Utah Supreme Court to provide legal representation under Rule 15-701 of the Supreme Court Rules of Professional Practice.

~~(h)~~ (j) "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.

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

~~(jl)~~ (l) "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.

~~(km)~~ (m) "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.

~~(ln)~~ (n) "Reckless" or "recklessly" denotes the conscious disregard of a duty that a lawyer is or reasonably should be aware of, or a conscious indifference to the truth.

~~(mo)~~ (o) "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.

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

(~~eq~~) "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.

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

Comment

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (d) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of these Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud

[5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2(c), 1.6(a) and 1.7(b). The communication necessary to obtain such consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (e) and (b). Other rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see paragraph (e).

Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

[10a] The definitions of “consult” and “consultation,” while deleted from the ABA Model Rule 1.0, have been retained in the Utah Rule because “consult” and “consultation” are used in the rules. See, e.g., Rules 1.2, 1.4, 1.14, and 1.18.

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:

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

(a)(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:

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

(b)(2) the representation is not prohibited by law;

(b)(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

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

Comment**General Principles**

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rules 1.0(f) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and, 4) if so, consult with the clients affected under paragraph (a)(1) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a)(1) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and nonlitigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule.

As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[4a] To eliminate confusion, former Rule 2.2 "Intermediary" has been deleted entirely. The term "intermediation" is changed in Rule 1.7 to "common representation". Comment [4] sets out the analysis that a lawyer should make in order to determine when common representation is improper. The comments to Rule 1.7 specifically instruct lawyers on what informed consent means in the situations.

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the

74 same transaction but in another, unrelated matter, the lawyer could not undertake the representation
75 without the informed consent of each client.

76 **Identifying Conflicts of Interest: Material Limitation**

77 [8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk
78 that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client
79 will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a
80 lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially
81 limited in the lawyer's ability to recommend or advocate all possible positions that each might take
82 because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that
83 would otherwise be available to the client. The mere possibility of subsequent harm does not itself require
84 disclosure and consent. The critical questions are the likelihood that a difference in interests will
85 eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional
86 judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on
87 behalf of the client.

88 **Lawyer's Responsibilities to Former Clients and Other Third Persons**

89 [9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may
90 be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities
91 to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or
92 corporate director.

93 **Personal Interest Conflicts**

94 [10] The lawyer's own interests should not be permitted to have an adverse effect on representation
95 of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it
96 may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has
97 discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm
98 representing the opponent, such discussions could materially limit the lawyer's representation of the
99 client. In addition, a lawyer may not allow related business interests to affect representation, for example,
100 by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule
101 1.8 for specific rules pertaining to a number of personal interest conflicts, including business transactions
102 with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to
103 other lawyers in a law firm).

104 [11] When lawyers representing different clients in the same matter or in substantially related matters
105 are closely related by blood or marriage, there may be a significant risk that client confidences will be
106 revealed and that the lawyer's family relationship will interfere with both loyalty and independent
107 professional judgment. As a result, each client is entitled to know of the existence and implications of the
108 relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a
109 lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a
110 client in a matter where that lawyer is representing another party, unless each client gives informed

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

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a

mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(~~mg~~)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(f) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(~~pr~~) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable

expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view, the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be

reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the client should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

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

(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 or 1.9, 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:

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

(b)(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) 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:

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

(c)(2) written notice is promptly given to any affected former client.

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

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

(f) An office of government lawyers who serve as counsel to a governmental entity such as the office of the Utah Attorney General, the United States Attorney, or a district, county, or city attorney does not constitute a "firm" for purposes of Rule 1.10 conflict imputation.

Comment**Definition of "Firm"**

[1] "Firm," as used in this rule, is defined in Rule 1.0(d). Whether two or more lawyers constitute a firm for purposes of determining conflict imputation can depend on the specific facts. See Rule 1.0, Comments [2] - [4].

[1a] Rule 1.10(f) does not appear in the ABA Model Rules. It is intended to recognize the inherent differences between an office of government lawyers and those in a firm, as defined in Rule 1.0(d). Notwithstanding the exclusion of an office of government lawyers from the provisions of Rule 1.10, all other conflicts rules, such as Rules 1.7, 1.8, and 1.11, must be fully satisfied on an individual-lawyer basis, and the group of government attorneys must, by adopting appropriate procedures, ensure that attorneys for whom there are individual conflict issues do not participate in and are screened from the particular representation. See Rule 1.0(~~f~~g) for definition of "screened."

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(~~m~~o) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[5a] The Utah rule differs from the ABA Model Rule in allowing lawyers disqualified under Rule 1.9 to be screened from participation in a matter under certain circumstances. If the conditions of paragraph (c) are met, imputation is removed, and consent to the new representation is not required. Lawyers should be aware, however, that courts may impose more stringent conditions in ruling upon motions to disqualify a lawyer from pending litigation.

[5b] Requirements for screening procedures are stated in Rule 1.0(~~m~~o). Paragraph (c)(2) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior

74 independent agreement, but that lawyer may not receive compensation directly related to the matter in
75 which the lawyer is disqualified.

76 [5c] Notice, including a description of the screened lawyer's prior representation and of the screening
77 procedures employed, should be given as soon as practicable after the need for screening becomes
78 apparent.

79 [6] Rule 1.10(d) removes imputation with the informed consent of the affected client or former client
80 under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine
81 that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has
82 given informed consent to the representation, confirmed in writing. In some cases, the risk may be so
83 severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client
84 waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed
85 consent, see Rule 1.0(f).

86 [7] Where a lawyer has joined a private firm after having represented the government, imputation is
87 governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the
88 government after having served clients in private practice, nongovernmental employment or in another
89 government agency, former-client conflicts are not imputed to government lawyers associated with the
90 individually disqualified lawyer.

91 [8] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k)
92 of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers
93 associated in a firm with the personally prohibited lawyer.

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

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

(a)(1) is subject to Rule 1.9(c); and

(a)(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:

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

(b)(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 the 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 screened from any participation in the matter and is apportioned no part of the fee therefrom.

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

(d)(1) is subject to Rules 1.7 and 1.9; and

(d)(2) shall not:

(d)(2)(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

(d)(2)(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 Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

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

(e)(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

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

Comment

[1] A lawyer, who has served or is currently serving as a public office or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7 In addition, such a lawyer may be subject to statutes and government regulations regarding conflicts of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(f) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the

74 government. The government has a legitimate need to attract qualified lawyers as well as to maintain high
75 ethical standards. Thus a former government lawyer is disqualified only from particular matters in which
76 the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph
77 (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against
78 entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters
79 involving a specific party or parties, rather than extending disqualification to all substantive issues on
80 which the lawyer worked, serves a similar function.

81 [5] When a lawyer has been employed by one government agency and then moves to a second
82 government agency, it may be appropriate to treat that second agency as another client for purposes of
83 this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency.
84 However, because the conflict of interest is governed by paragraph (d), the latter agency is not required
85 to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government
86 agencies should be regarded as the same or different clients for conflict of interest purposes is beyond
87 the scope of these Rules. See Rule 1.13 Comment [6].

88 [6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(~~mo~~) (requirements for
89 screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership
90 share established by prior independent agreement, but that lawyer may not receive compensation directly
91 relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

92 [7] Notice, including a description of the screened lawyer's prior representation and of the screening
93 procedures employed, generally should be given as soon as practicable after the need for screening
94 becomes apparent.

95 [8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which
96 means actual knowledge; it does not operate with respect to information that merely could be imputed to
97 the lawyer.

98 [9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a
99 government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

100 [10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In
101 determining whether two particular matters are the same, the lawyer should consider the extent to which
102 the matters involve the same basic facts, the same or related parties, and the time elapsed.

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

(a) Except as stated in paragraph (d) and in Rule 2.4(c), 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:

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

(c)(2) written notice is promptly given to the parties and any appropriate tribunal.

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

Comment

[1] This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2) and C of the Model Code of Judicial Conduct provide that a part-time judge, judge pro tempore or retired judge recalled to active service, may not "act as a lawyer in any proceeding in which he served as a judge or in any other proceeding related thereto." Although phrased differently from this Rule, those rules correspond in meaning.

[2] Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule prohibits such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0(f) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are stated in Rule 1.0(~~m~~o). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Rule 1.18. Duties to Prospective Client.

(a) A person who consults with a lawyer about 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 learned information from a prospective client shall not use or reveal that information, 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).

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

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

(d)(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

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

(d)(2)(ii) written notice is promptly given to the prospective client.

Comment

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's consultations with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact

information, or provides legal information of general interest. Such a person communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, and is thus not a "prospective client". Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0(f) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

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

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

74 [8] Notice, including a general description of the subject matter about which the lawyer was consulted,
75 and of the screening procedures employed, generally should be given as soon as practicable after the
76 need for screening becomes apparent.

77 [9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a
78 prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or
79 papers to the lawyer's care, see Rule 1.15.

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.

(c) A lawyer serving as a mediator in a mediation in which the parties have fully resolved all issues:

(c)(1) may prepare formal documents that memorialize and implement the agreement reached in mediation;

(c)(2) shall recommend that each party seek independent legal advice before executing the documents; and

(c)(3) with the informed consent of all parties confirmed in writing, may record or may file the documents in court, informing the court of the mediator's limited representation of the parties for the sole purpose of obtaining such legal approval as may be necessary.

Comment

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-

resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(e)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

[5a] Rule 2.4(c) is intended to permit a lawyer-mediator for parties who have successfully resolved all issues between them to draft a legally binding agreement and, to the extent necessary or appropriate, record or file related papers or pleadings with an appropriate tribunal. In so doing, the lawyer will be jointly representing the parties in their common goal of effecting proper legal filings or obtaining judicial approval of their fully resolved issues. Because the parties in this situation have fully resolved their issues, they are not considered "adverse" under Rule 1.7(a)(1). ABA Model Rule 2.4 does not address the lawyer's drafting of documents to implement the parties' agreement.

Rule 3.3. Candor toward the Tribunal.

(a) A lawyer shall not knowingly or recklessly:

(a)(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; or

(a)(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction directly adverse to the position of the client and not disclosed by opposing counsel.

(b) A lawyer shall not 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.

(c) 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.

(d) 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.

(e) 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.

Comment

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(~~ag~~) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false or is reckless with respect to its truth.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] The Utah rule is different from the ABA Model Rule. In *In re Larsen*, 2016 UT 26, 379 P.3d 1209, the Utah Supreme Court held that the former rule's plain language required finding actual knowledge before an attorney could be found to have violated the rule, and that language in former Comment [3]

permitted finding a violation on something less than actual knowledge. The amendments to Rule 3.3(a), and to Comments [2], [4], [5] and [9] permit finding a violation of the rule if an attorney recklessly, as defined in Rule 1.0(h), makes a false statement of law or fact or fails to disclose controlling authority.

Legal Argument

[4] Legal argument based on a knowingly or recklessly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (b) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(g). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (b) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony

will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done-making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Rule 3.5. Impartiality and Decorum of the Tribunal.

A lawyer shall not:

(a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law; or

(b) Communicate *ex parte* in an adversary proceeding as to the merits of the case with a judge, juror, prospective juror or court official during the proceeding, prior to full discharge of that person's duties in the proceeding, unless authorized to do so by law, rule or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(c)(1) the communication is prohibited by law, rule or court order;

(c)(2) the juror has made known to the lawyer a desire not to communicate; or

(c)(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

Comment

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Utah Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate *ex parte* with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law, rule or court order.

[2a] Paragraph (b) of Utah Rule 3.5 differs from the ABA Model Rule by inclusion of the qualifying phrases "in an adversary proceeding," "as to the merits" and "prior to full discharge of that person's duties in the proceeding." In the interest of fairness and impartiality, these additional qualifications give the practitioner more guidance and more clearly define the types of *ex parte* communications that are prohibited. Consistent with treatment elsewhere in these Rules, the exceptions stated in paragraphs (b) and (c)(1) of the Utah Rule also include "by rule" where the ABA Model Rule does not.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law, rule or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceedings of a tribunal, including a deposition. See Rule 1.0(eg).

Rule 4.2. Communication with Persons Represented by Counsel~~Counsel~~Legal Professionals.

(a) **General Rule.** 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 a legal professional~~another lawyer~~ in the matter, unless the lawyer has the consent of the legal professional~~other lawyer~~. Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with another's client if authorized to do so by any law, rule, or court order, in which event the communication shall be strictly restricted to that allowed by the law, rule or court order, or as authorized by paragraphs (b), (c), (d) or (e) of this Rule.

(b) **Rules Relating to Unbundling of Legal Services.** A lawyer may consider a person whose representation by a legal professional~~counsel~~ in a matter does not encompass all aspects of the matter to be unrepresented for purposes of this Rule and Rule 4.3, unless that person's counsel has provided written notice to the lawyer of those aspects of the matter or the time limitation for which the person is represented. Only as to such aspects and time is the person considered to be represented by counsel.

(c) **Rules Relating to Government Lawyers Engaged in Civil or Criminal Law Enforcement.** A government lawyer engaged in a criminal or civil law enforcement matter, or a person acting under the lawyer's direction in the matter, may communicate with a person known to be represented by a lawyer if:

(c)(1) the communication is in the course of, and limited to, an investigation of a different matter unrelated to the representation or any ongoing, unlawful conduct; or

(c)(2) the communication is made to protect against an imminent risk of death or serious bodily harm or substantial property damage that the government lawyer reasonably believes may occur and the communication is limited to those matters necessary to protect against the imminent risk; or

(c)(3) the communication is made at the time of the arrest of the represented person and after that person is advised of the right to remain silent and the right to counsel and voluntarily and knowingly waives these rights; or

(c)(4) the communication is initiated by the represented person, directly or through an intermediary, if prior to the communication the represented person has given a written or recorded voluntary and informed waiver of counsel, including the right to have substitute counsel, for that communication.

(d) Organizations as Represented Persons.

(d)(1) When the represented person is an organization, an individual is represented by counsel for the organization if the individual is not separately represented with respect to the subject matter of the communication, and

(d)(1)(A) with respect to a communication by a government lawyer in a civil or criminal law enforcement matter, is known by the government lawyer to be a current member of the control group of the represented organization; or

(d)(1)(B) with respect to a communication by a lawyer in any other matter, is known by the lawyer to be

(d)(1)(B)(i) a current member of the control group of the represented organization; or

(d)(1)(B)(ii) a representative of the organization whose acts or omissions in the matter may be imputed to the organization under applicable law; or

(d)(1)(B)(iii) a representative of the organization whose statements under applicable rules of evidence would have the effect of binding the organization with respect to proof of the matter.

(d)(2) The term "control group" means the following persons: (A) the chief executive officer, chief operating officer, chief financial officer, and the chief legal officer of the organization; and (B) to the extent not encompassed by Subsection (A), the chair of the organization's governing body, president, treasurer, secretary and a vice-president or vice-chair who is in charge of a principal business unit, division or function (such as sales, administration or finance) or performs a major policy-making function for the organization; and (C) any other current employee or official who is known to be participating as a principal decision maker in the determination of the organization's legal position in the matter.

(d)(3) This Rule does not apply to communications with government parties, employees or officials unless litigation about the subject of the representation is pending or imminent. Communications with elected officials on policy matters are permissible when litigation is pending or imminent after disclosure of the representation to the official.

(e) **Limitations on Communications.** When communicating with a represented person pursuant to this Rule, no lawyer may

(e)(1) inquire about privileged communications between the person and their legal professional counsel or about information regarding litigation strategy or legal arguments of counsel or seek to induce the person to forgo representation or disregard the advice of the person's counsel; or

(e)(2) engage in negotiations of a plea agreement, settlement, statutory or non-statutory immunity agreement or other disposition of actual or potential criminal charges or civil enforcement claims or sentences or penalties with respect to the matter in which the person is represented by a legal professional counsel unless such negotiations are permitted by law, rule or court order.

Comment

[1] Rule 4.2 of the Utah Rules of Professional Conduct deviates substantially from ABA Model Rule 4.2 by the addition of paragraphs (b), (c), (d) and (e). Paragraphs (c), (d) and (e) are substantially the same as the former Utah Rules 4.2(b), (c) and (d), adopted in 1999, as are most of the corresponding comments that address these three paragraphs of this Rule. There is also a variation from the Model Rule in paragraph (a), where the body of judicially created rules are added as a source to which the lawyer may look for general exceptions to the prohibition of communication with persons represented by counsel. (Because of these major differences, the comments to this Rule do not correspond numerically to the comments in ABA Model Rule 4.2.)

[2] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a legal professional lawyer in a matter against possible overreaching by other legal professionals lawyers who are participating in the matter, interference by those lawyers with

75 | the ~~client-legal professional client-lawyer~~ relationship and the uncounselled disclosure of information
76 | relating to the representation.

77 | [3] This Rule applies to communications with any person who is represented by a legal professional
78 | ~~counsel~~ concerning the matter to which the communication relates.

79 | [4] This Rule applies even though the represented person initiates or consents to the communication.
80 | A lawyer must immediately terminate communication with a person if, after commencing communication,
81 | the lawyer learns that the person is one with whom communication is not permitted by this Rule.

82 | [5] This Rule does not prohibit communication with a represented person or an employee or agent of
83 | such a person where the subject of the communication is outside the scope of the representation. For
84 | example, the existence of a controversy between a government agency and a private party, between two
85 | organizations, between individuals or between an organization and an individual does not prohibit a
86 | lawyer for either from communicating with nonlawyer representatives of the other regarding a separate
87 | matter. Nor does the Rule prohibit government lawyers from communicating with a represented person
88 | about a matter that does not pertain to the subject matter of the representation but is related to the
89 | investigation, undercover or overt, of ongoing unlawful conduct. Moreover, this Rule does not prohibit a
90 | lawyer from communicating with a person to determine if the person in fact is represented by counsel
91 | concerning the subject matter that the lawyer wishes to discuss with that person.

92 | [6] This Rule does not preclude communication with a represented person who is seeking a second
93 | opinion from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a
94 | communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter
95 | may communicate directly with each other, and a lawyer is not prohibited from advising a client
96 | concerning a communication that the client is legally entitled to make.

97 | [7] A lawyer may communicate with a person who is known to be represented by a legal professional
98 | ~~counsel~~ in the matter to which the communication relates only if the communicating lawyer obtains the
99 | consent of the represented person's legal professional lawyer, or if the communication is otherwise
100 | permitted by paragraphs (a), (b) or (c). Paragraph (a) permits a lawyer to communicate with a person
101 | known to be represented by a legal professional counsel in a matter without first securing the consent of
102 | the represented person's legal professional lawyer if the communicating lawyer is authorized to do so by
103 | law, rule or court order. Paragraph (b) recognizes that the scope of representation of a person by a legal
104 | professional counsel may, under Rule 1.2, be limited by mutual agreement. Because a legal professional
105 | ~~lawyer~~ for another party cannot know which of Rule 4.2 or 4.3 applies under these circumstances, the
106 | lawyer who has undertaken a limited representation must assume the responsibility for informing another
107 | party's lawyer of the limitations. This ensures that such a limited representation will not improperly or
108 | unfairly induce an adversary's lawyer to avoid contacting the person on those aspects of a matter for
109 | which the person is not represented by counsel. Note that this responsibility on the lawyer undertaking
110 | limited-scope representation also relates to the ability of another party's lawyer to make certain *ex parte*
111 | contacts without violating Rule 4.3. Utah Rule of Professional Conduct 4.2(b) and related sections of this

Comment are part of the additions to the ABA Model Rules clarifying that a lawyer may undertake limited representation of a client under the provisions of Rule 1.2. Paragraph (c) specifies the circumstances in which government lawyers engaged in criminal and civil law enforcement matters may communicate with persons known to be represented by a lawyer in such matters without first securing consent of that lawyer.

[8] A communication with a represented person is authorized by paragraph (a) if permitted by law, rule or court order. This recognizes constitutional and statutory authority as well as the well-established role of the state judiciary in regulating the practice of the legal profession. Direct communications are also permitted if they are made pursuant to discovery procedures or judicial or administrative process in accordance with the orders or rules of the court or other tribunal before which a matter is pending.

[9] A communication is authorized under paragraph (a) if the lawyer is assisting the client to exercise a constitutional right to petition the government for redress of grievances in a policy dispute with the government and if the lawyer notifies the government's lawyer in advance of the intended communication. This would include, for example, a communication by a lawyer with a governmental official with authority to take or recommend action in the matter, provided that the sole purpose of the lawyer's communication is to address a policy issue, including the possibility of resolving a disagreement about a policy position taken by the government. If, on the other hand, the matter does not relate solely to a policy issue, the communicating lawyer must comply with this Rule.

[10] In the event the person with whom the lawyer communicates is not known to be represented by a legal professional counsel in the matter, the lawyer's communication is subject to Rule 4.3.

[11] Paragraph (c) of this Rule makes clear that this Rule does not prohibit all communications with represented persons by state or federal government lawyers (including law enforcement agents and cooperating witnesses acting at their direction) when the communications occur during the course of civil or criminal law enforcement. The exemptions for government lawyers contained in paragraph (c) of this Rule recognize the unique responsibilities of government lawyers to enforce public law. Nevertheless, where the lawyer is representing the government in any other role or litigation (such as a contract or tort claim, for example) the same rules apply to government lawyers as are applicable to lawyers for private parties.

[12] A "civil law enforcement proceeding" means a civil action or proceeding before any court or other tribunal brought by the governmental agency that seeks to engage in the communication under relevant statutory or regulatory provisions, or under the government's police or regulatory powers to enforce the law. Civil law enforcement proceedings do not include proceedings related to the enforcement of an administrative subpoena or summons or a civil investigative demand; nor do they include enforcement actions brought by an agency other than the one that seeks to make the communication.

[13] Under paragraph (c) of this Rule, communications are permitted in a number of circumstances. For instance, subparagraph (c)(1) permits the investigation of a different matter unrelated to the representation or any ongoing unlawful conduct. (Unlawful conduct involves criminal activity and conduct

subject to a civil law enforcement proceeding.) Such violations include, but are not limited to, conduct that is intended to evade the administration of justice including in the proceeding in which the represented person is a defendant, such as obstruction of justice, subornation of perjury, jury tampering, murder, assault, or intimidation of witnesses, bail jumping, or unlawful flight to avoid prosecution. Also, permitted are undercover activities directed at ongoing criminal activity, even if it is related to past criminal activity for which the person is represented by counsel.

[14] Under subparagraph (c)(2), a government lawyer may engage in limited communications to protect against an imminent risk of serious bodily harm or substantial property damage. The imminence and gravity of the risk will be determined from the totality of the circumstances. Generally, a risk would be imminent if it is likely to occur before the government lawyer could obtain court approval or take other reasonable measures. An imminent risk of substantial property damage might exist if there is a bomb threat directed at a public building. The Rule also makes clear that a government attorney may communicate directly with a represented party A at the time of arrest of the represented party" without the consent of the party's counsel, provided that the represented party has been fully informed of his or her constitutional rights at that time and has waived them. A government lawyer must be very careful to follow Rule 4.2(d) and would have a significant burden to establish that the waiver of right to counsel was knowing and voluntary. The better practice would include a written or recorded waiver. Nothing in this Rule, however, prevents law enforcement officers, even if acting under the general supervision of a government lawyer, from questioning a represented person. The actions of the officers will not be imputed to the government lawyer unless the conversation has been "scripted" by the government lawyer.

[15] If government lawyers have any concerns about the applicability of any of the provisions of paragraph (c) or are confronted with other situations in which communications with represented persons may be warranted, they may seek court approval for the *ex parte* communication.

[16] Any lawyer desiring to engage in a communication with a represented person that is not otherwise permitted under this Rule must apply in good faith to a court of competent jurisdiction, either *ex parte* or upon notice, for an order authorizing the communication. This means, depending on the context: (1) a district judge or magistrate judge of a United States District Court; (2) a judge or commissioner of a court of general jurisdiction of a state having jurisdiction over the matter to which the communication relates; or (3) a military judge.

[17] In determining whether a communication is appropriate a lawyer may want to consider factors such as: (1) whether the communication with the represented person is intended to gain information that is relevant to the matter for which the communication is sought; (2) whether the communication is unreasonable or oppressive; (3) whether the purpose of the communication is not primarily to harass the represented person; and (4) whether good cause exists for not requesting the consent of the person's counsel prior to the communication. The lawyer should consider requesting the court to make a written record of the application, including the grounds for the application, the scope of the authorized communications, and the action of the judicial officer, absent exigent circumstances.

[18] Organizational clients are entitled to the protections of this Rule. Paragraph (d) specifies which individuals will be deemed for purposes of this Rule to be represented by the lawyer who is representing the organization in a matter. Included within the control group of an organizational client, for example, would be the designated high level officials identified in subparagraph(d)(2). Whether an officer performs a major policy function is to be determined by reference to the organization's business as a whole. Therefore, a vice-president who has policy making functions in connection with only a unit or division would not be a major policy maker for that reason alone, unless that unit or division represents a substantial part of the organization's total business. A staff member who gives advice on policy but does not have authority, alone or in combination with others, to make policy does not perform a major policy making function.

[19] Also included in the control group are other current employees known to be "participating as principal decision makers" in the determination of the organization's legal position in the proceeding or investigation of the matter. In this context, "employee" could also encompass former employees who return to the company's payroll or are specifically retained for compensation by the organization to participate as principal decision makers for a particular matter. In general, however, a lawyer may, consistent with this Rule, interview a former employee of an organization without consent of the organization's lawyer.

[20] In a criminal or civil law enforcement matter involving a represented organization, government lawyers may, without consent of the organization's lawyer, communicate with any officer, employee, or director of the organization who is not a member of the control group. In all other matters involving organizational clients, however, the protection of this Rule is extended to two additional groups of individuals: individuals whose acts might be imputed to the organization for the purpose of subjecting the organization to civil or criminal liability and individuals whose statements might be binding upon the organization. A lawyer permitted by this Rule to communicate with an officer, employee, or director of an organization must abide by the limitations set forth in paragraph (e).

[21] This Rule does prohibit communications with any person who is known by the lawyer making the communication to be represented by a legal professional ~~counsel~~ in the matter to which the communication relates. A person is "known" to be represented when the lawyer has actual knowledge of the representation. Knowledge is a question of fact to be resolved by reference to the totality of the circumstances, including reference to any written notice of the representation. See Rule 1.0(f). Written notice to a lawyer is relevant, but not conclusive, on the issue of knowledge. Lawyers should ensure that written notice of representation is distributed to all attorneys working on a matter.

[22] Paragraph (e) is intended to regulate a lawyer's communications with a represented person, which might otherwise be permitted under the Rule, by prohibiting any lawyer from taking unfair advantage of the absence of the represented person's legal professional ~~counsel~~. The prohibition contained in paragraph (e) is limited to inquiries concerning privileged communications and lawful

222 defense strategies. The Rule does not prohibit inquiry into unlawful litigation strategies or communications
223 involving, for example, perjury or obstruction of justice.

224 [23] The prohibition of paragraph (e) against the communicating lawyer's negotiating with the
225 represented person with respect to certain issues does not apply if negotiations are authorized by law,
226 rule or court order. For example, a court of competent jurisdiction could authorize a lawyer to engage in
227 direct negotiations with a represented person. Government lawyers may engage in such negotiations if a
228 represented person who has been arrested, charged in a criminal case, or named as a defendant in a
229 civil law enforcement proceeding initiates communications with the government lawyer and the
230 communication is otherwise consistent with requirement of subparagraph (c)(4).

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 legal professionals ~~lawyers~~ in the firm conform to the applicable Rules of Professional Conduct.

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

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

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

or

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

Comment

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. This includes members of a partnership, the shareholders in a law firm organized as a professional corporation and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other legal professionals ~~lawyers~~ in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all legal professionals ~~lawyers~~ in the firm will conform to the applicable Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced legal professionals ~~lawyers~~ are properly supervised. The responsibility for the firm's compliance with paragraph (a) resides with each partner, or other lawyer in the firm with comparable authority.

[2a] Utah's Comment [2] to this Rule differs from the ABA Model Rule's Comment [2]. The Model Rule Comment [2] might suggest the possibility that a firm could be in violation of the Rule without an individual or group of individuals also being in violation. Utah's Comment [2] makes clear that even though the concept of firm discipline is possible, a firm should not be responsible in the absence of individual culpability for a rule violation.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced legal professionals~~lawyers~~, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior legal professionals~~lawyers~~— can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all legal professionals~~lawyers~~ associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c)(1) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another legal professional~~lawyer~~. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm legal professionals~~lawyers~~— engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

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

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another legal professional's~~lawyer's~~ conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

Rule 8.3. Reporting Professional Misconduct.

(a) A lawyer who knows that another ~~lawyer-legal professional~~ has committed a violation of the applicable Rules of Professional Conduct that raises a substantial question as to that ~~lawyer's-legal professional's~~ honesty, trustworthiness or fitness as a ~~lawyer-legal professional~~ 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.

Comment

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

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

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

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

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

**LIMITED LICENSE LEGAL TECHNICIAN
RULES OF PROFESSIONAL CONDUCT (LLLT RPC)**

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FUNDAMENTAL PRINCIPLES OF PROFESSIONAL CONDUCT FOR AN LLLT*

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. LLLTs, within the scope of their limited licenses to deliver legal services, also play a significant role. The fulfillment of the LLLT's role requires an understanding of their relationship with and function in our legal system. A consequent obligation of LLLTs is to maintain the highest standards of ethical conduct.

In fulfilling professional responsibilities, an LLLT may provide services consistent with the authorized scope of his or her practice that require the performance of many difficult tasks. Not every situation that an LLLT may encounter can be foreseen, but fundamental ethical principles are always present as guidelines.

The Rules of Professional Conduct for LLLTs point the way for the LLLT who aspires to the highest level of ethical conduct, and provide standards by which to judge the transgressor.

Each LLLT must find within his or her own conscience the touchstone against which to test the extent to which his or her actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the legal profession, including LLLTs and the society that LLLTs serve, that should provide to an LLLT the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction.

* These Fundamental Principles of the Rules of Professional Conduct are taken from the former Preamble to the Rules of Professional Conduct for lawyers as approved and adopted by the Supreme Court in 1985. Washington lawyers and judges have looked to the 1985 Preamble of the Rules of Professional Conduct as a statement of our overarching aspiration to faithfully serve the best interests of the public, the legal system, and the efficient administration of justice. The former Preamble is preserved here to inspire LLLTs to strive for the highest possible degree of ethical conduct, and these Fundamental Principles should inform many of our decisions as LLLTs. The Fundamental Principles do not, however, alter any of the obligations expressly set forth in the Rules of Professional Conduct, nor are they intended to affect in any way the manner in which the Rules are to be interpreted or applied.

PREAMBLE AND SCOPE

PREAMBLE: AN LLLT'S RESPONSIBILITIES

[1] An LLLT is authorized to provide limited legal services that lie within the scope of the practice that the LLLT is licensed to undertake. Within that scope, an LLLT is a member of the legal profession, is a representative of clients, and has a special responsibility for the quality of justice.

[2] As a representative of clients within a limited scope, an LLLT performs various functions. As advisor, an LLLT provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an evaluator, an LLLT acts by examining a client's legal affairs and reporting about them to the client or to others. To the extent an LLLT is allowed to act as an advocate or as a negotiator under APR 28, an LLLT conscientiously acts in the best interest of the client, and seeks a result that is advantageous to the client but consistent with the requirements of honest dealings with others.

[3] In addition to these limited representational functions, an LLLT may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to LLLTs who are or have served as third-party neutrals. *See, e.g.*, Rules 1.12 and 2.4. In addition, there are Rules that apply to LLLTs who are not active in the practice of law or to practicing LLLTs even when they are acting in a nonprofessional capacity. For example, an LLLT who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. *See* Rule 8.4.

[4] In all professional functions an LLLT should be competent, prompt, and diligent. An LLLT should maintain communication with a client concerning the representation. An LLLT should

keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct for LLLTs.

[5] An LLLT's conduct should conform to the requirements of the law, both in professional service to clients and in the LLLT's business and personal affairs. An LLLT should use the law's procedures only for legitimate purposes and not to harass or intimidate others. An LLLT should demonstrate respect for the legal system and for those who serve it, including judges, lawyers, other LLLTs, and public officials.

[6] As a member of the legal profession, an LLLT should seek to improve access to the legal system, the administration of justice, and the quality of service rendered by the legal profession, and should also seek to strengthen legal education. An LLLT should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all LLLTs should devote professional time and resources to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. An LLLT should aid the legal profession in pursuing these objectives and should help the legal profession regulate itself in the public interest.

[7] Many of an LLLT's professional responsibilities are prescribed in the Rules of Professional Conduct for LLLTs, as well as substantive and procedural law to the extent applicable to LLLTs. However, an LLLT is also guided by personal conscience and the approbation of lawyers, clients, and professional peers. Within the authorized scope of an LLLT's practice, the LLLT should strive to attain the highest level of skill and to exemplify the legal profession's ideals of public service.

[8] An LLLT's responsibilities as a limited-scope representative of clients and as a public citizen are usually harmonious. Thus, an LLLT can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] Notwithstanding the limited scope of authority of an LLLT, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between an LLLT's responsibilities to clients, to the legal system, and to the LLLT's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct for LLLTs often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that LLLTs meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns. Every LLLT is responsible for observance of the Rules of Professional Conduct for LLLTs. An LLLT should also aid in securing their observance by other legal practitioners. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] LLLTs are obliged to understand their relationship to our legal system. The Rules of Professional Conduct for LLLTs, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct for LLLTs are rules of reason. They should be interpreted with reference to the purposes of legal representation (within the LLLT's authorized scope of practice) 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 LLLT has discretion to exercise professional judgment. No disciplinary action should be taken when the LLLT chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the LLLT and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define an LLLT's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a context in which the LLLT's role has been or will be shaped. That context includes court rules relating to matters of licensure, laws defining specific authorization and obligations of LLLTs, and substantive and procedural law in general. The Comments are sometimes used to alert LLLTs to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by lawyer, client, peer, and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform an LLLT, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law within the authorized scope of an LLLT's practice.

[17] For purposes of determining the LLLT's authority and responsibility, principles of substantive law external to these Rules determine whether a client-LLLTT relationship exists.

Most of the duties flowing from the client-LLLT relationship attach only after the client-LLLT relationship is formed. But there are some duties, such as that of confidentiality under Rule 1.6, that may attach when the LLLT agrees to consider whether a client-LLLT relationship shall be established. *See* Lawyer RPC 1.18 and Washington Comment [11] thereto. Whether a client-LLLT relationship exists for any specific purpose can depend on the circumstances and is a question of fact.

[18] [Reserved.]

[19] 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 an LLLT'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 an LLLT 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.

[20] Violation of a Rule should not itself give rise to a cause of action against an LLLT, nor should it create any presumption in such a case that a legal duty has been breached. The Rules are designed to provide guidance to LLLTs and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. The fact that a Rule is a just basis for an LLLT's self-assessment, or for sanctioning an LLLT under the administration of a disciplinary authority, does not imply that a party who is adverse to an LLLT's client in any proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by LLLTs, an LLLT's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Additional Washington Comments (22 - 25)

[22] Nothing in these Rules is intended to change existing Washington law on the use of the Rules of Professional Conduct in a civil action, see *Hizey v. Carpenter*, 119 Wn.2d 251, 830 P.2d 646 (1992), or to suggest how that law applies to the obligations of LLLTs. *See also* APR 28(K)(1).

[23] The Rules of Professional Conduct for LLLTs are modeled on Washington's Rules of Professional Conduct for lawyers (Lawyer RPC). The structure of these Rules, like the Lawyer RPC, generally parallels the structure of the American Bar Association's Model Rules of Professional Conduct. When an entire provision that appears in the Lawyer RPC is deleted for purposes of these Rules, the deletion is signaled by the phrase "Reserved." The reservation of a rule or portion of a rule that appears in the Lawyer RPC does not necessarily mean that the conduct of an LLLT in that area is unregulated; the conduct may be regulated under APR 28 or

another rule. Should a situation arise where a rule or portion of a rule is reserved but the counterpart rule in the Lawyer RPC addresses the conduct, the LLLT should look to the relevant Lawyer RPC and comments to that rule for guidance. In general, when a Rule has a counterpart in the Lawyer RPC, the comments to that Lawyer RPC may be looked to as a guide to interpretation of that Rule to the extent that both the Lawyer RPC and the LLLT RPC are substantially similar and the content of the comments is applicable to the conduct of an LLLT.

[24] Comment [18] of Scope is reserved. The corresponding Comment of the Lawyer RPC relates to the specific role and authority of certain lawyers in government service, and is not applicable to the professional role of an LLLT.

[25] The Fundamental Principles of Professional Conduct and the Preamble and Scope sections of these Rules were adapted from the corresponding parts of the Lawyer RPC with only minor modifications. These provisions express the role of an LLLT as a legal professional acting within the justice system. With the exception of the reservation of Comment [18], modifications relate to the limited scope of an LLLT's license to deliver legal services, and the corresponding limitations on the role that an LLLT will have in the development of certain aspects of the legal profession, such as advocacy and development of the common law.

LLLT RPC 1.0A TERMINOLOGY

(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 an LLLT 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 LLLT must obtain or transmit it within a reasonable time thereafter.

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

(d) "Fraud" or "fraudulent" denotes conduct that has a purpose to deceive and is fraudulent under the substantive or procedural law of the applicable jurisdiction, except that it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the LLLT 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 an LLLT denotes the conduct of a reasonably prudent and competent LLLT.

(i) "Reasonable belief" or "reasonably believes" when used in reference to an LLLT denotes that the LLLT 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 an LLLT denotes that an LLLT of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of an LLLT or 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 LLLT or lawyer is obligated to protect under these Rules, the Lawyer RPC, 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 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.

LLLT RPC 1.0B ADDITIONAL TERMINOLOGY

(a) "APR" denotes the Washington Supreme Court's Admission and Practice Rules.

(b) "GR" denotes the Washington Supreme Court's General Rules.

(c) "Lawyer" denotes a person licensed as a lawyer and eligible to practice law in any United States jurisdiction.

(d) "Lawyer RPC" denotes the Washington Supreme Court's Rules of Professional Conduct for lawyers.

(e) "Legal practitioner" denotes a lawyer or a limited license legal technician.

(f) "Limited License Legal Technician" or "LLLT" denotes a person qualified by education, training, and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by APR 28 and related regulations.

(g) "ELLLTC" denotes the Washington Supreme Court's Rules for Enforcement of Limited License Legal Technician Conduct.

(h) "Representation" or "represent," when used in connection with the provision of legal assistance by an LLLT, denotes limited legal assistance as set forth in APR 28 to a pro se client.

Comment

[1] Rule 1.0A was adapted from Lawyer RPC 1.0 with no substantive changes and applies to LLLTs analogously. Rule 1.0B adds terms that require definitions in light of the licensing of LLLTs as legal practitioners in Washington.

[2] The definition of the term "lawyer" is taken from APR 28(B). When used in the LLLT RPC, however, the term is used to denote a lawyer who is acting within the scope of the lawyer's license and in accordance with the Lawyer RPC. So, for example, the authorization in Rule 5.9 to enter into a law partnership with a lawyer requires that the lawyer is admitted and authorized to practice in the State of Washington.

[3] The terms "firm" and "law firm" are used interchangeably in the Lawyer RPC and also in these Rules. An LLLT should be cautious, however, in using the words "law firm" to describe a law practice that includes only LLLTs. The name and description of an LLLT's practice should not imply that a lawyer is associated with the firm unless that is the case. Rule 7.5(a) requires that any firm name used for an LLLT practice that does not include a lawyer include the words "Legal Technician."

TITLE 1. CLIENT-LLLT RELATIONSHIP

LLLT RPC 1.1 COMPETENCE

An LLLT shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Comment

[1] Rule 1.1 was adapted from Lawyer RPC 1.1 with no substantive changes and applies to LLLTs analogously.

LLLT RPC 1.2
SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY
BETWEEN CLIENT AND LLLT

(a) Subject to paragraphs (c), (d), and (g), an LLLT shall abide by a client's decisions 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. An LLLT may take such action on behalf of the client as is impliedly authorized to carry out the representation. An LLLT shall abide by a client's decision whether to settle a matter.

(b) An LLLT's representation of a client does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) An LLLT must limit the scope of the representation and provide disclosures informing a potential client as required by these Rules and APR 28.

(d) An LLLT shall not counsel a client to engage, or assist a client, in conduct that the LLLT knows is criminal or fraudulent.

(e) [Reserved.]

(f) An LLLT shall not purport to act as an LLLT for any person or organization if the LLLT knows or reasonably should know that the LLLT is acting without the authority of that person or organization and beyond his or her authorized scope of practice, unless the LLLT is authorized or required to so act by law or a court order.

(g) Nothing in this Rule expands an LLLT's authorized scope of practice provided in APR 28.

Comment

[1] Rule 1.2 was adapted from Lawyer RPC 1.2 with changes to reflect the limited scope of practice authorized by APR 28. Otherwise, it applies to LLLTs analogously.

[2] Paragraph (a) was modified from the Lawyer RPC to exclude references to criminal cases, and paragraph (d) was modified from the Lawyer RPC to exclude (and therefore prohibit) an LLLT from discussing with a client the legal consequences of any proposed criminal or fraudulent conduct and assisting a client in determining the validity, scope, meaning, or application of the law with respect to any such conduct. In circumstances where a client has engaged or may engage in conduct that the LLLT knows is criminal or fraudulent, the LLLT shall not provide services related to such conduct and shall inform the client that the client should seek the services of a lawyer.

[3] Unlike a lawyer, an LLLT may perform only limited services for a client. Before performing any services for a fee, an LLLT must enter into a written contract with the client as required by APR 28(G)(2).

[4] Additional requirements concerning the authorized scope of an LLLT's practice are imposed by APR 28. An LLLT must ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If not, the LLLT shall not render any legal assistance on the issue and must advise the client to seek the services of a lawyer. If the issue does lie within the defined practice area for which the LLLT is licensed, then the LLLT is authorized to render the services that are enumerated in APR 28.

[5] An LLLT must personally perform the authorized services for the client and may not delegate those services to a person who is not either an LLLT or a lawyer. This prohibition, however, does not prevent a person who is neither an LLLT nor a lawyer from performing translation services. APR 28(G)(1).

[6] An LLLT may not provide services that exceed the scope of the LLLT's authority under APR 28. If an issue arises for which the client needs services that exceed the scope of the LLLT's authority, the LLLT must inform that client that the client should seek the services of a lawyer. APR 28(G)(3).

[7] [Reserved.]

[8] Certain conduct and services are specifically prohibited to an LLLT by APR 28(H).

LLLT RPC 1.3 DILIGENCE

An LLLT shall act with reasonable diligence and promptness in representing a client.

Comment

[1] Rule 1.3 was adapted from Lawyer RPC 1.3 with no substantive changes and applies to LLLTs analogously. *See also* Comment [5] to Rule 1.2.

LLLT RPC 1.4 COMMUNICATION

(a) An LLLT shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), 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 LLLT's conduct when the LLLT knows that the client expects assistance not permitted by the LLLT RPC or other law.

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

Comment

[1] Rule 1.4 was adapted from Lawyer RPC 1.4 with no substantive changes and applies to LLLTs analogously.

LLLT RPC 1.5 FEES

(a) An LLLT 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 LLLT;

(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 LLLT or LLLTs performing the services;

(8) whether the fee is fixed or hourly; and

(9) the terms of the fee agreement between the LLLT and the client, including whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the LLLT's billing practices.

(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, in writing, before commencing

the representation. Upon the request of the client in any matter, the LLLT shall communicate to the client in writing the basis or rate of the fee.

(c) [Reserved.]

(d) An LLLT shall not enter into an arrangement for, charge, or collect any fee, the payment or amount of which is contingent upon the outcome of the case.

(e) An LLLT may not enter into an arrangement for the division of a fee with another LLLT or lawyer who is not in the same firm as the LLLT.

(f) Fees and expenses paid in advance of performance of services shall comply with Rule 1.15A, subject to the following exceptions:

(1) [Reserved.]

(2) An LLLT may charge a flat fee for specified legal services, which constitutes complete payment for those services and is paid in whole or in part in advance of the LLLT providing the services. A flat fee must be agreed to in advance in a writing signed by the client. The written agreement may specify that the flat fee is the LLLT's property on receipt, in which case the fee shall not be deposited into a trust account under Rule 1.15A. To qualify for the exception from the requirements of Rule 1.15A, the written fee agreement shall, in a manner that can easily be understood by the client, include the following: (i) the scope of the services to be provided; (ii) the total amount of the fee and the terms of payment; (iii) that the fee is the LLLT's property immediately on receipt and will not be placed into a trust account; (iv) that the fee agreement does not alter the client's right to terminate the client-LLLT relationship; and (v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed. A statement in substantially the following form satisfies this requirement:

[LLLT/law firm] agrees to provide, for a flat fee of \$_____, the following services: _____ . The flat fee shall be paid as follows: _____ . Upon [LLLT's/law firm's] receipt of all or any portion of the flat fee, the funds are the property of [LLLT/law firm] and will not be placed in a trust account. The fact that you have paid your fee in advance does not affect your right to terminate the client-LLLT relationship. In the event our relationship is terminated before the agreed-upon legal services have been completed, you may or may not have a right to a refund of a portion of the fee.

(3) In the event of a dispute relating to a fee under paragraph (f)(2) of this Rule, the LLLT shall take reasonable and prompt action to resolve the dispute.

Comment

[1] Rule 1.5 was adapted from Lawyer RPC 1.5 with changes to reflect the limited scope of an LLLT's authorized practice and special requirements imposed by APR 28. Otherwise, it applies to LLLTs analogously.

[2] An LLLT, unlike a lawyer, is prohibited from entering into a contingent fee or retainer agreement with a client. Lawyer RPC 1.5(c) and 1.5(f)(1) address contingent fees and retainers respectively. Accordingly, paragraphs (c) and (f)(1) are reserved under this Rule. Reservation of such paragraphs, however, is not intended to prohibit an LLLT from being apportioned a part of a fee earned by a lawyer under a contingent fee or retainer arrangement when the LLLT and the lawyer are associated in a for profit business relationship authorized under Rule 5.9.

[3] Under the circumstances specified in Lawyer RPC 1.5(e), a lawyer may agree to a division of a fee either with another lawyer who is not in the same firm or with an authorized lawyer referral service. By contrast, paragraph (e) of this Rule categorically prohibits an LLLT from dividing a fee. An LLLT may pay the usual charges of an LLLT referral service. *See* Rule 7.2(e).

[4] Unlike a lawyer, an LLLT is required by APR 28(G)(2) to enter into a written contract with the client before the LLLT begins to perform any services for a fee that includes, among other things, identification of all fees and costs to be charged to the client for the services to be performed. The provisions concerning a flat fee described in (f)(2) of this Rule, if applicable, should be included in that contract. The contract must be signed by both the client and the LLLT before the LLLT begins to perform any services for a fee.

[5] An LLLT is ordinarily prohibited from modifying the written contract with the client that is required by APR 28(G)(3). Courts have applied the provisions of RPC 1.8(a) to modifications or renegotiations of fee arrangements by lawyers made during the representation of a client when the modified or renegotiated terms are more favorable to the lawyer than originally agreed upon. *See, e.g., Valley/50th Ave., LLC v. Stewart*, 159 Wn.2d 736, 743-44, 153 P.3d 186, 189 (2007); *Rafel Law Grp. PLLC v. Defoor*, 176 Wn. App. 210, 223-24, 308 P.3d 767, 775 (2013), *review denied*, 179 Wn.2d 1011, 316 P.3d 495 (2014). Under these Rules, business transactions between LLLTs and clients are prohibited. *See* Rule 1.8(a). Accordingly, any changes in the basis or rate of an LLLT's fee that benefit the LLLT must be identified in the initial contract. *See also* Comment [8] to Rule 1.2.

LLLT RPC 1.6

CONFIDENTIALITY OF INFORMATION

(a) An LLLT shall not reveal information relating to the 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 paragraph (b).

(b) An LLLT to the extent the LLLT reasonably believes necessary:

(1) shall reveal information relating to the representation of a client to prevent reasonably certain death or substantial bodily harm;

(2) may reveal information relating to the representation of a client to prevent the client from committing a crime;

(3) may reveal information relating to the representation of a client to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the LLLT's services;

(4) may reveal information relating to the representation of a client to secure legal advice about the LLLT's compliance with these Rules;

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

(6) may reveal information relating to the representation of a client to comply with a court order; or

(7) may reveal information relating to the representation of a client to inform a tribunal about any breach of fiduciary responsibility when the client is serving as a court appointed fiduciary such as a guardian, personal representative, or receiver.

Comment

[1] Rule 1.6 was adapted from Lawyer RPC 1.6 with no substantive changes and applies to LLLTs analogously.

[2] Under APR 28(K)(3) the Washington law of attorney-client privilege extends to LLLTs “to the same extent as it would apply to an attorney-client relationship.” In communicating the existence or scope of this privilege to a client, a LLLT must take steps to ensure that the client understands the LLLTs role and to avoid any impression that the LLLT is serving as a lawyer in the matter.

LLLT RPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), an LLLT 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 LLLT's responsibilities to another client, a former client, or a third person or by a personal interest of the LLLT.

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

(1) the LLLT reasonably believes that the LLLT 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 LLLT with respect to the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).

Comment

[1] Rule 1.7 was adapted from Lawyer RPC 1.7 with no substantive changes and applies to LLLTs analogously.

[2] Under no circumstances may an LLLT represent more than one party in any domestic relations matter. *See* Appendix APR 28 Regulation 2.

LLLT RPC 1.8

CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) An LLLT shall not enter into a business transaction with a current client.

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

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

(e) An LLLT shall not, while representing a client in connection with contemplated or pending litigation, advance or guarantee financial assistance to a client, except that:

(1) an LLLT may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

(2) [Reserved.]

(f) An LLLT 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 LLLT's independence of professional judgment or with the client-LLLT relationship; and

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

(g) [Reserved.]

(h) An LLLT shall not:

(1) make an agreement prospectively limiting the LLLT's liability to a client for malpractice; 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 an independent lawyer in connection therewith.

(i) An LLLT shall not acquire a proprietary interest in the cause of action or subject matter of litigation in which the LLLT is assisting a client.

(j) An LLLT shall not:

(1) have sexual relations with a current client of the LLLT unless a consensual sexual relationship existed between them at the time the client-LLLT relationship commenced; or

(2) have sexual relations with a representative of a current client if the sexual relations would, or would likely, damage or prejudice the client in the representation.

(3) For purposes of Rule 1.8(j), "LLLT" means any LLLT who assists in the representation of the client, but does not include other LLLT members of a firm with which the LLLT is associated if those other LLLTs provide no such assistance.

(k) Except as otherwise provided in these Rules,

(1) while LLLTs are associated in a firm with other LLLTs, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them; and

(2) while LLLTs and lawyers are associated in a firm, the prohibitions in Lawyer RPC 1.8(a) through (i) that apply to any lawyer shall apply to any LLLT, and the prohibitions in the foregoing paragraphs (a), (h), and (i) shall not apply to any lawyers unless the conduct is otherwise prohibited by the Lawyer RPC.

(l) An LLLT who is related to another LLLT or a lawyer as parent, child, sibling, or spouse, or who has any other close familial or intimate relationship with another LLLT or lawyer, shall not represent a client in a matter directly adverse to a person who the LLLT knows is represented by the related LLLT or lawyer unless:

- (1) the client gives informed consent to the representation; and
- (2) the representation is not otherwise prohibited by Rule 1.7.

(m) [Reserved.]

Comment

[1] This Rule was adapted from Lawyer RPC 1.8 with modifications described in these Comments. Otherwise, it applies to LLLTs analogously.

[2] Under limited and defined circumstances, Lawyer RPC 1.8(a) permits a lawyer to enter into a business transaction with a client, or to acquire a property interest adverse to a client. Because of the limitations on the scope of an LLLT's authorized practice, the analysis and disclosures that suffice under Lawyer RPC 1.8(a) to enable a lawyer to enter into such a transaction despite the existence of a conflict of interest are not feasible in the client-LLLT relationship. For this reason, LLLT RPC 1.8(a) strictly prohibits an LLLT from entering into any business transaction with a current client.

[3] LLLTs will have no role in class action litigation and Rule 1.8(e)(2) is accordingly reserved in this Rule. LLLT RPC 1.8(e) does not authorize activities that are beyond the scope of the LLLT's limited license. Nothing in Rule 1.8(e) is intended to prohibit lawyer members of a firm with which an LLLT is associated from engaging in conduct permitted by Lawyer RPC 1.8(e)(2).

[4] Rule 1.8(g) is reserved. LLLTs do not engage in the making of aggregate settlements, or aggregated agreements as to guilty or nolo contendere pleas in criminal cases. Nothing in Rule 1.8(g) is intended to prohibit lawyer members of a firm with which an LLLT is associated from participating in such settlements if permitted by the Lawyer RPC.

[5] Unlike a lawyer, an LLLT is strictly prohibited by Rule 1.8(h)(1) from making any agreement that prospectively limits the LLLT's liability to the client for malpractice.

[6] A client or former client of an LLLT who is not represented by a lawyer is unrepresented for purposes of Rule 1.8(h)(2).

[7] Unlike a lawyer, an LLLT is prohibited by Rule 1.8(i) from acquiring any proprietary interest in a client's cause of action or the subject matter of litigation.

[8] If one LLLT or lawyer in a firm has a conflict of interest specified under this Rule, other LLLTs and lawyers in the firm may, under some circumstances, have the same conflict of interest or be subject to the same prohibition. This is called imputation of a conflict of interest. Similarly, in a firm that includes both LLLTs and lawyers, a conflict of interest of a lawyer will, under some circumstances, be imputed to an LLLT in the firm. Rule 1.8(k) describes the imputations of Rule 1.8 conflicts in a firm.

[9] Rule 1.8(m) is reserved. LLLTs are not permitted to engage in the scope of practice anticipated by Lawyer RPC 1.8(m). The reservation of Rule 1.8(m) in these Rules is not intended to prohibit lawyer members of a firm with which an LLLT is associated from engaging in the scope of practice described in Rule 1.8(m) of the Lawyer RPC.

LLLT RPC 1.9 DUTIES TO FORMER CLIENTS

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

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

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

(2) about whom that LLLT had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

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

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

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

Comment

[1] Rule 1.9 was adapted from Lawyer RPC 1.9 with no substantive changes and applies to LLLTs analogously.

LLLT RPC 1.10
IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) Except as provided in paragraph (e), while LLLTs 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 or 1.9, unless the prohibition is based on a personal interest of the disqualified LLLT and does not present a significant risk of materially limiting the representation of the client by the remaining LLLTs in the firm.

(b) When an LLLT 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 LLLT and not currently represented by the firm, unless:

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

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

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

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

(e) When the prohibition on representation under paragraph (a) is based on Rule 1.9(a) or

(b) and arises out of the disqualified LLLT's association with a prior firm, no other LLLT in the firm shall knowingly represent a person in a matter in which that LLLT is disqualified unless:

(1) the personally disqualified LLLT is screened by effective means from participation in the matter and is apportioned no part of the fee therefrom;

(2) the former client of the personally disqualified LLLT receives notice of the conflict and the screening mechanism used to prohibit dissemination of information relating to the former representation;

(3) the firm is able to demonstrate by convincing evidence that no material information relating to the former representation was transmitted by the personally disqualified LLLT before implementation of the screening mechanism and notice to the former client.

Any presumption that information protected by Rules 1.6 and 1.9(c) has been or will be transmitted may be rebutted if the personally disqualified LLLT serves on his or her former firm and former client an affidavit attesting that the personally disqualified LLLT will not participate in the matter and will not discuss the matter or the representation with any other LLLT or employee of his or her current firm, and attesting that during the period of the LLLT's personal disqualification those LLLTs, or employees who do participate in the matter will be apprised that the personally disqualified LLLT is screened from participating in or discussing the matter. Such affidavit shall describe the procedures being used effectively to screen the personally disqualified LLLT. Upon request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The firm, the personally disqualified LLLT, or the former client may seek judicial review in a court of general jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.

(f) When LLLTs and lawyers are associated in a firm, a lawyer's conflict of interest under Lawyer RPC 1.7 or Lawyer RPC 1.9 is imputed to LLLTs in the firm in the same way as conflicts are imputed to LLLTs under this Rule. Each of the other provisions of this Rule also applies in the same way when lawyer conflicts are imputed to LLLTs in the firm.

Comment

[1] Rule 1.10 was adapted from Lawyer RPC 1.10 with no substantive changes except to reflect the fact that LLLTs and lawyers may practice in a firm together. The general rules concerning imputation of conflicts of interest apply to LLLTs and firms in which both LLLTs and lawyers are associated analogously.

LLLT RPC 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Except as law may otherwise expressly permit, an LLLT 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 LLLT 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 an LLLT or lawyer is disqualified from representation under paragraph (a) of this Rule or Lawyer RPC 1.11, no LLLT in a firm with which that LLLT or lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified LLLT or 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, an LLLT having information that the LLLT knows is confidential government information about a person acquired when the LLLT 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 LLLT is associated may undertake or continue representation in the matter only if the disqualified LLLT is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, an LLLT 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 LLLT participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed writing; or

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

Comment

[1] Rule 1.11 was adapted from Lawyer RPC 1.11 with no substantive changes except to reflect the fact that LLLTs and lawyers may practice in a firm together. This Rule applies to LLLTs and firms in which both LLLTs and lawyers are associated analogously.

LLLT RPC 1.12
FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER
THIRD-PARTY NEUTRAL

(a) Except as stated in paragraph (d), an LLLT shall not represent anyone in connection with a matter in which the LLLT 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) An LLLT shall not negotiate for employment with any person who is involved as a party or as LLLT for a party in a matter in which the LLLT is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral. An LLLT serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or LLLT involved in a matter in which the clerk is participating personally and substantially, but only after the LLLT has notified the judge or other adjudicative officer.

(c) If an LLLT or lawyer is disqualified by paragraph (a) of this Rule or Lawyer RPC 1.12, no LLLT in a firm with which that LLLT or lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified LLLT or 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.

Comment

[1] Rule 1.12 was adapted from Lawyer RPC 1.12 with no substantive changes. This Rule applies to LLLTs and firms in which both LLLTs and lawyers are associated analogously.

LLLT RPC 1.13
[Reserved.]

Comment

[1] At present, the authorized scope of LLLT practice does not contemplate representation of an organization.

LLLT RPC 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 LLLT shall, as far as reasonably possible, maintain a normal client-LLLT relationship with the client.

(b) When the LLLT 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 LLLT may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client. In taking any protective action under this Rule, the LLLT shall not exceed the LLLT's authorized scope of practice.

(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 LLLT 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.

Comment

[1] Rule 1.14 was adapted from Lawyer RPC 1.14 with no substantive changes except in Rule 1.14(b). Otherwise, this Rule applies to LLLTs analogously.

[2] Unlike Lawyer RPC 1.14, Rule 1.14(b) does not suggest seeking the appointment of a guardian ad litem, conservator or guardian. Those actions contemplate court appearances and knowledge of multiple areas of law which may exceed the authorized scope of an LLLT's practice. Accordingly, that language from Lawyer Rule 1.14(b) has been omitted from this Rule.

[3] Protective action taken by an LLLT under paragraph (b) of this Rule may include obtaining the services of a lawyer. An LLLT should proceed cautiously when independently undertaking protective action on behalf of a person with diminished capacity, and the LLLT should carefully evaluate and weigh all the circumstances and options. For a discussion of potential protective actions and relevant considerations, see Lawyer RPC 1.14, Comments [5] - [7].

LLLT RPC 1.15A SAFEGUARDING PROPERTY

(a) This Rule applies to property of clients or third persons in an LLLT's possession in connection with a representation.

(b) An LLLT must not use, convert, borrow, or pledge client or third person property for the LLLT's own use.

(c) An LLLT must hold property of clients and third persons separate from the LLLT's own property.

(1) An LLLT must deposit and hold in a trust account funds subject to this Rule pursuant to paragraph (h) of this Rule.

(2) Except as provided in Rule 1.5(f), and subject to the requirements of paragraph (h) of this Rule, an LLLT shall deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the LLLT only as fees are earned or expenses incurred.

(3) An LLLT must identify, label, and appropriately safeguard any property of clients or third persons other than funds. The LLLT must keep records of such property that identify the property, the client or third person, the date of receipt, and the location of safekeeping. The LLLT must preserve the records for seven years after return of the property.

(d) An LLLT must promptly notify a client or third person of receipt of the client or third person's property.

(e) An LLLT must promptly provide a written accounting to a client or third person after distribution of property or upon request. An LLLT must provide at least annually a written accounting to a client or third person for whom the LLLT is holding funds.

(f) Except as stated in this Rule, an LLLT must promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive.

(g) If an LLLT possesses property in which two or more persons (one of which may be the LLLT) claim interests, the LLLT must maintain the property in trust until the dispute is resolved. The LLLT must promptly distribute all undisputed portions of the property. The LLLT must take reasonable action to resolve the dispute.

(h) An LLLT must comply with the following for all trust accounts:

(1) No funds belonging to the LLLT may be deposited or retained in a trust account except as follows:

(i) funds to pay bank charges, but only in an amount reasonably sufficient for that purpose;

(ii) funds belonging in part to a client or third person and in part presently or potentially to the LLLT must be deposited and retained in a trust account, but any portion belonging to the LLLT must be withdrawn at the earliest reasonable time; or

(iii) funds necessary to restore appropriate balances.

(2) An LLLT must keep complete records as required by Rule 1.15B.

(3) An LLLT may withdraw funds when necessary to pay client costs. The LLLT may withdraw earned fees only after giving reasonable notice to the client of the intent to do so, through a billing statement or other document.

(4) Receipts must be deposited intact.

(5) All withdrawals must be made only to a named payee and not to cash. Withdrawals must be made by check or by electronic transfer.

(6) Trust account records must be reconciled as often as bank statements are generated or at least quarterly. The LLLT must reconcile the check register balance to the bank statement balance and reconcile the check register balance to the combined total of all client ledger records required by Rule 1.15B(a)(2).

(7) An LLLT must not disburse funds from a trust account until deposits have cleared the banking process and been collected, unless the LLLT and the bank have a written agreement by which the LLLT personally guarantees all disbursements from the account without recourse to the trust account.

(8) Disbursements on behalf of a client or third person may not exceed the funds of that person on deposit. The funds of a client or third person must not be used on behalf of anyone else.

(9) Only an LLLT or a lawyer admitted to practice law may be an authorized signatory on the account. If an LLLT is associated in a practice with one or more lawyers, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meet the requirements of ELC 15.7(d) and (e). In the exercise of ordinary prudence, an LLLT may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ELC 15.7(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, an LLLT shall apply the following criteria:

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Limited License Legal Technician's Trust Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ELLLTC 15.4 and ELC 15.7(e).

(2) Client or third-person funds that will produce a positive net return to the client or third person must be placed in one of the following two types of non-IOLTA trust accounts, unless the client or third person requests that the funds be deposited in an IOLTA account:

(i) a separate interest-bearing trust account for the particular client or third person with earned interest paid to the client or third person; or

(ii) a pooled interest-bearing trust account with sub-accounting that allows for computation of interest earned by each client or third person's funds with the interest paid to the appropriate client or third person.

(3) In determining whether to use the account specified in paragraph (i)(1) or an account specified in paragraph (i)(2), an LLLT must consider only whether the funds will produce a positive net return to the client or third person, as determined by the following factors:

(i) the amount of interest the funds would earn based on the current rate of interest and the expected period of deposit;

(ii) the cost of establishing and administering the account, including the cost of the LLLT's services and the cost of preparing any tax reports required for interest accruing to a client or third person's benefit; and

(iii) the capability of financial institutions to calculate and pay interest to individual clients or third persons if the account in paragraph (i)(2)(ii) is used.

(4) The provisions of paragraph (i) do not relieve an LLLT or law firm from any obligation imposed by these Rules or the ELLTTC.

Comment

[1] Rule 1.15A was adapted from Lawyer RPC 1.15A with no substantive changes except to reflect limitations on the authorized scope of an LLLT's practice. Otherwise, this Rule applies to LLLTs analogously. The Comments to Lawyer RPC 1.15A provide important guidance to the correct interpretation and application of this Rule.

[2] Lawyer RPC 1.15A(a) contemplates that lawyers may act as escrow agents for the closing of a purchase and sale of real estate or personal property, a practice area that is not contemplated by APR 28. Accordingly, there is no counterpart in this Rule to Lawyer RPC 1.15A(a)(2).

LLLT RPC 1.15B REQUIRED TRUST ACCOUNT RECORDS

(a) An LLLT must maintain current trust account records. They may be in electronic or manual form and must be retained for at least seven years after the events they record. At minimum, the records must include the following:

(1) Checkbook register or equivalent for each trust account, including entries for all receipts, disbursements, and transfers, and containing at least:

(i) identification of the client matter for which trust funds were received, disbursed, or transferred;

(ii) the date on which trust funds were received, disbursed, or transferred;

- (iii) the check number for each disbursement;
 - (iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and
 - (v) the new trust account balance after each receipt, disbursement, or transfer;
- (2) Individual client ledger records containing either a separate page for each client or an equivalent electronic record showing all individual receipts, disbursements, or transfers, and also containing:
- (i) identification of the purpose for which trust funds were received, disbursed, or transferred;
 - (ii) the date on which trust funds were received, disbursed or transferred;
 - (iii) the check number for each disbursement;
 - (iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and
 - (v) the new client fund balance after each receipt, disbursement, or transfer;
- (3) Copies of any agreements pertaining to fees and costs;
- (4) Copies of any statements or accountings to clients or third parties showing the disbursement of funds to them or on their behalf;
- (5) Copies of bills for legal fees and expenses rendered to clients;
- (6) of invoices, bills, or other documents supporting all disbursements or transfers from the trust account;
- (7) Bank statements, copies of deposit slips, and cancelled checks or their equivalent;
- (8) Copies of all trust account bank and client ledger reconciliations; and
- (9) Copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them.
- (b)** Upon any change in the LLLT's practice affecting the trust account, including dissolution or sale of a law firm or other entity, or suspension or other change in membership status, the LLLT must make appropriate arrangements for the maintenance of the records specified in this Rule.

Comment

[1] Rule 1.15B was adapted from Lawyer RPC 1.15B with no substantive changes and applies to LLLTs analogously.

LLLT RPC 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) An LLLT 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 these Rules or other law;
- (2) the LLLT's physical or mental condition materially impairs the LLLT's ability to represent the client; or
- (3) the LLLT is discharged.

(b) An LLLT 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 LLLT's services that the LLLT reasonably believes is criminal or fraudulent;
- (3) the client has used the LLLT's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the LLLT considers repugnant or with which the LLLT has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the LLLT regarding the LLLT's services and has been given reasonable warning that the LLLT will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the LLLT or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

(c) [Reserved.]

(d) Upon termination of representation, an LLLT 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 a lawyer or another LLLT, surrendering papers and property to which

the client is entitled, and refunding any advance payment of fee that has not been earned or incurred.

Comment

[1] This Rule was adapted from Lawyer RPC 1.16 with no substantive changes except to reflect the limited scope of representation that an LLLT provides to pro se clients and that an LLLT does not enter a notice of appearance. For this reason, paragraph (c) is reserved. Otherwise, Lawyer RPC 1.16 applies to LLLTs analogously.

LLLT RPC 1.17 SALE OF LAW PRACTICE

An LLLT, firm of LLLTs, or a law firm with which one or more LLLTs are associated may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) [Reserved.]

(b) The entire practice, or the entire area of practice, is sold to one or more LLLTs, lawyers, LLLT firms 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 a lawyer or another LLLT 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 ninety (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.

Comment

[1] This Rule was adapted from Lawyer RPC 1.17 with no substantive changes except to reflect that an LLLT may practice in the same firm with one or more lawyers. Otherwise, this Rule applies to LLLTs analogously.

[2] A law firm consisting solely of LLLT owners is not authorized to purchase a law practice that includes client matters requiring provision of legal services outside the authorized LLLT scope of practice or defined practice area(s). See APR 28 and related regulations.

LLLT RPC 1.18
DUTIES TO PROSPECTIVE CLIENT

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

(b) Even when no client-LLLT relationship ensues, an LLLT 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 or except as provided in paragraph (e).

(c) An LLLT 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 LLLT received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d) or (e). If an LLLT or lawyer is disqualified from representation under this paragraph or Lawyer RPC 1.18(c), no LLLT in a firm with which that LLLT or lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d) or, with respect to lawyers, Lawyer RPC 1.18(d).

(d) When the LLLT 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 LLLT 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 LLLT 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) An LLLT may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the LLLT from representing a different client in the matter. The prospective client may also expressly consent to the LLLT's subsequent use of information received from the prospective client.

Comment

[1] This Rule was adapted from Lawyer RPC 1.18 with no substantive changes except to reflect that LLLTs and lawyers may practice in the same firm. It applies to LLLTs and to firms in which both LLLTs and lawyers are associated analogously.

[2] The Comments to Lawyer RPC 1.18 offer valuable guidance to the correct interpretation and application of this Rule. In particular, Comment 2 to Lawyer RPC 1.18 explains application of this Rule to unsolicited and unilateral communications of information from a person who does not have a reasonable expectation that the LLLT is willing to discuss the possibility of forming a client-LLLT relationship.

TITLE 2. COUNSELOR

LLLT RPC 2.1 ADVISOR

In representing a client, an LLLT shall exercise independent professional judgment and render candid advice. In rendering advice, an LLLT 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.

Comment

[1] This Rule was adapted from Lawyer RPC 2.1 with no substantive changes and applies to LLLTs analogously.

[2] This Rule and its requirement regarding the exercise of independent professional judgment do not expand the limitations on the authorized scope of an LLLT's practice under APR 28 and related regulations..

LLLT RPC 2.2 [Reserved.]

LLLT RPC 2.3 [Reserved.]

Comment

[1] Lawyer RPC 2.3 pertains to a lawyer providing an evaluation of a matter affecting a client for the use of someone other than the client. If the need for an evaluation arises in an LLLT's authorized scope of practice under APR 28, an LLLT should look to Lawyer RPC 2.3 for guidance.

LLLT RPC 2.4 LLLT SERVING AS THIRD-PARTY NEUTRAL

(a) An LLLT serves as a third-party neutral when the LLLT assists two or more persons who are not clients of the LLLT 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 LLLT to assist the parties to resolve the matter.

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

Comment

[1] This Rule was adapted from Lawyer RPC 2.4 with no substantive changes and applies to LLLTs analogously.

TITLE 3. ADVOCATE

LLLT RPC 3.1

ADVISING AND ASSISTING CLIENTS IN PROCEEDINGS BEFORE A TRIBUNAL

(a) In a matter reasonably related to a pending or potential proceeding before a tribunal, an LLLT shall not engage, counsel a client to engage, or assist a client, in conduct involving:

(1) an abuse of legal procedure, including asserting or controverting a position that is frivolous or lacks a good faith basis in law and fact;

(2) delay of a proceeding without reasonable and substantial purpose;

(3) submission of a false statement of fact or law to a tribunal or offering evidence known to be false;

(4) obstruction of another party's access to evidence or the unlawful alteration, destruction, or concealment of a document or other material having potential evidentiary value;

(5) falsification of evidence or assisting or inducing false testimony of a witness;

(6) knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; or

(7) making frivolous discovery requests or failing to reasonably comply with legally proper discovery requests of an opposing party.

(b) An LLLT shall not seek to influence a judge, juror, prospective juror, or other official by means prohibited by law, communicate ex parte with such an individual unless authorized to do so by law or court order, or engage in conduct intended to disrupt a tribunal. An LLLT shall not counsel or assist a client or another person to do such an act.

Comment

[1] This Rule is substantially different from Lawyer RPC 3.1 because the role of the LLLT as an advocate is limited. In many instances, an LLLT will be providing assistance to a client who is a party to a court proceeding. In providing such assistance, an LLLT may be authorized within the scope of a specific practice area to accompany and assist a pro se client in certain proceedings. Assistance may include responding to factual and procedural questions from a tribunal. As a member of the legal profession, an LLLT is ethically bound to avoid conduct that undermines the integrity of the adjudicative process or threatens the fair and orderly administration of justice. Although less comprehensive than Title 3 of the Lawyer RPC, the core Title 3 principles incorporated into Rule 3.1 address the issues likely to be encountered by an LLLT, with supplemental guidance available in Title 3 of the Lawyer RPC and commentary thereto.

[2] Certain provisions of Title 3 of the Lawyer RPC, such as Lawyer as Witness in Rule 3.7 and the Special Responsibilities of a Prosecutor in Rule 3.8, do not apply to LLLTs. In these instances, the corresponding LLLT RPC has been reserved. Rules 3.6 and 3.9 represent ethical issues that would rarely if ever arise in the context of an LLLT's limited-scope representation. Accordingly, these provisions have been reserved as well, though guidance is available in the corresponding Lawyer RPC in the event that such an ethical dilemma does arise in a LLLT representation.

LLLT RPC 3.2

[Reserved.]

Comment

[1] See Comments [1] and [2] to Rule 3.1.

LLLT RPC 3.3

[Reserved.]

Comment

[1] See Comments [1] and [2] to Rule 3.1.

LLLT RPC 3.4

[Reserved.]

Comment

[1] See Comments [1] and [2] to Rule 3.1.

LLLT RPC 3.5

[Reserved.]

Comment

[1] See Comment [1] to Rule 3.1.

LLLT RPC 3.6

[Reserved.]

Comment

[1] See Comment [2] to Rule 3.1.

LLLT RPC 3.7

[Reserved.]

Comment

[1] See Comment [2] to Rule 3.1.

LLLT RPC 3.8

[Reserved.]

Comment

[1] See Comment [2] to Rule 3.1.

LLLT RPC 3.9

[Reserved.]

Comment

[1] See Comment [2] to Rule 3.1.

TITLE 4. TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

LLLT RPC 4.1

TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client an LLLT 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.

Comment

[1] This Rule was adapted from Lawyer RPC 4.1 with no substantive changes and applies to LLLTs analogously.

LLLT RPC 4.2

COMMUNICATION WITH PERSON REPRESENTED BY LAWYER

In representing a client, an LLLT shall not communicate about the subject of the representation with a person the LLLT knows to be represented by a lawyer in the matter.

Comment

[1] A person who has chosen to be represented by a lawyer should be protected against possible overreaching by another lawyer. *See* Lawyer RPC 4.2 and Comments to that rule. Rule 4.2 extends to LLLTs the prohibition on communicating with a person represented by a lawyer. This Rule differs from Lawyer RPC 4.2 in that the prohibition is absolute. While a lawyer may be permitted to communicate directly with a person who is represented by another lawyer with the other lawyer's consent, or if authorized to do so by law or court order, there are no exceptions to the prohibition as it applies to LLLTs.

LLLT RPC 4.3 DEALING WITH PERSON NOT REPRESENTED BY LAWYER

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

Comment

[1] This Rule was adapted from Lawyer RPC 4.3 with no substantive changes and applies to LLLTs analogously.

[2] [Reserved.]

[3] The client of an LLLT is an unrepresented person for purposes of Lawyer RPC 4.2 and 4.3.

[4] An LLLT may have occasion to communicate directly with a nonparty who is assisted by another LLLT. A risk of unwarranted intrusion into a privileged relationship may arise when an LLLT deals with a person who is assisted by another LLLT. Client-LLLT communications, however, are privileged to the same extent as client-lawyer communications. *See* APR 28(K)(3). An LLLT's ethical duty of confidentiality further protects the LLLT client's right to confidentiality in that professional relationship. *See* LLLT RPC 1.6(a). When dealing with a person who is assisted by another LLLT, an LLLT must respect these legal rights that protect the client-LLLT relationship.

LLLT RPC 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, an LLLT 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) An LLLT who receives a document relating to the representation of the LLLT's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

Comment

[1] This Rule was adapted from Lawyer RPC 4.4 with no substantive changes and applies to LLLTs analogously.

TITLE 5. LAW FIRMS AND ASSOCIATIONS

LLLT RPC 5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LLLTS

(a) An LLLT partner in a law firm, and an LLLT who individually or together with other LLLTs 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 LLLTs in the firm conform to the LLLT RPC.

(b) An LLLT having direct supervisory authority over another LLLT shall make reasonable efforts to ensure that the other LLLT conforms to the LLLT RPC.

(c) An LLLT shall be responsible for another LLLT's violation of the LLLT RPC if:

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

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

(d) An LLLT shall be responsible for a lawyer violation of the Lawyer RPC if the LLLT is a partner or has comparable managerial authority and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] This Rule was adapted from Lawyer RPC 5.1 with no substantive changes and applies to LLLTs analogously.

[2] When under Rule 5.9 an LLLT has managerial authority in a firm comprised of both lawyers and LLLTs, the LLLT should support efforts of the firm's lawyers with managerial authority under Lawyer RPC 5.1 and 5.10 to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Lawyer RPC.

[3] Under paragraph (d), when an LLLT with managerial authority in a firm comprised of both lawyers and LLLTs knows of a lawyer's violation of the Lawyer RPC at a time when its consequences can be avoided or mitigated, reasonable remedial action will ordinarily consist of promptly reporting the violation to one of the firm's lawyers with managerial authority so that the lawyer manager can take appropriate action under Lawyer RPC 5.1(c).

LLLT RPC 5.2 RESPONSIBILITIES OF A SUBORDINATE LLLT

(a) An LLLT is bound by the LLLT RPC notwithstanding that the LLLT acted at the direction of another person.

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

Comment

[1] This Rule was adapted from Lawyer RPC 5.2 with no substantive changes except to reflect that LLLTs and lawyers may practice in the same firm. It applies to LLLTs and to firms in which both LLLTs and lawyers are associated analogously.

LLLT RPC 5.3 RESPONSIBILITIES REGARDING NON-LLLT ASSISTANTS

With respect to a non-LLLT employed or retained by or associated with an LLLT:

(a) an LLLT partner, and an LLLT who individually or together with other LLLTs 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 LLLT;

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

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

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

(2) the LLLT is a partner or has comparable managerial authority in the 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.

Comment

[1] This Rule was adapted from Lawyer RPC 5.3 with no substantive changes and applies to LLLTs analogously.

LLLT RPC 5.4 PROFESSIONAL INDEPENDENCE OF AN LLLT

(a) An LLLT or LLLT firm shall not share legal fees with anyone who is not an LLLT, except that:

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

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

(3) an LLLT or LLLT firm may include employees who are not LLLTs in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) [Reserved.]

(5) an LLLT authorized to complete unfinished legal business of a deceased LLLT may pay to the estate or other representative of the deceased LLLT that proportion of the total compensation that fairly represents the services rendered by the deceased LLLT.

(b) An LLLT shall not form a partnership with anyone who is not an LLLT if any of the activities of the partnership consist of the practice of law.

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

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

(1) a person who is not an LLLT owns any interest therein, except that a fiduciary representative of the estate of an LLLT may hold the stock or interest of the LLLT for a reasonable time during administration;

(2) a person who is not an LLLT is a corporate director or officer (other than as secretary or treasurer) thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a person who is not an LLLT has the right to direct or control the professional judgment of an LLLT.

Comment

[1] This Rule was adapted from Lawyer RPC 5.4 with no substantive changes except to change references to a “nonlawyer” to “person who is not an LLLT” to avoid confusion. It applies to LLLTs analogously.

[2] Rule 5.4 does not prohibit lawyers and LLLTs from sharing fees and forming business structures to the extent permitted by Rule 5.9.

LLLT RPC 5.5 UNAUTHORIZED PRACTICE OF LAW

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

(b) [Reserved.]

(c) [Reserved.]

(d) [Reserved.]

Comment

[1] Lawyer RPC 5.5(a) expresses the basic prohibition on a legal practitioner practicing law in a jurisdiction where that individual is not specifically licensed or otherwise authorized to practice law. It reflects the general notion (enforced through criminal-legal prohibitions and other law) that legal services may only be provided by those licensed to do so. This limitation on the ability to practice law is designed to protect the public against the rendition of legal services by unqualified persons. *See* Comment [2] to Lawyer RPC 5.5.

As applied to LLLTs, this principle should apply with equal force. An actively licensed LLLT should practice law as an LLLT only in a jurisdiction where he or she is licensed to do so, i.e., Washington State. An LLLT must not practice law in a jurisdiction where he or she is not authorized to do so. Unless and until other jurisdictions authorize Washington-licensed LLLTs

to practice law, it will be unethical under this Rule for the LLLT to provide or attempt to provide legal services extraterritorially. Relatedly, it is unethical to assist anyone in activities that constitute the unauthorized practice of law in any jurisdiction. *See also* APR 28(H)(6) (prohibiting an LLLT from providing services to a client in connection with a legal matter in another state unless permitted by the laws of that state to perform the services for the client).

[2] Lawyer RPC 5.5(b) through (d) define the circumstances in which lawyers can practice in Washington despite being unlicensed here. For example, lawyers actively licensed elsewhere may provide services on a temporary basis in Washington in association with a lawyer admitted to practice here or when the lawyer's activities "arise out of or are reasonably related to the lawyer's practice in his or her home jurisdiction." These provisions also recognize that certain non-Washington-licensed lawyers may practice here on more than a temporary basis (e.g., lawyers providing services authorized by federal law), and otherwise prohibit non-Washington-licensed lawyers from establishing a systematic and continuous presence in Washington for the practice of law.

These provisions are, at this time, unnecessary in the LLLT RPC because there are no limited licenses in other jurisdictions tantamount to Washington's LLLT rules and no need to authorize limited license practitioners in other jurisdictions to practice law in Washington, either temporarily or on an ongoing basis. For this reason, paragraphs (b) through (d) are reserved.

LLLT RPC 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

An LLLT shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of an LLLT or 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 LLLT's right to practice is part of the settlement of a client controversy.

Comment

[1] This Rule was adapted from Lawyer RPC 5.6 with no substantive changes except to reflect that LLLTs and lawyers may practice in the same firm. It applies to LLLTs and to firms in which both LLLTs and lawyers are associated analogously.

LLLT RPC 5.7 RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a) An LLLT shall be subject to the LLLT RPC with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

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

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

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

Comment

[1] This Rule was adapted from Lawyer RPC 5.7 with no substantive changes except to change the reference to a "nonlawyer" (in Lawyer RPC 5.7(b)) to "anyone except an LLLT or a lawyer" (in Rule 5.7(b)) to avoid confusion. It applies to LLLTs analogously.

LLLT RPC 5.8 MISCONDUCT INVOLVING LLLTS AND LAWYERS NOT ACTIVELY LICENSED TO PRACTICE LAW

(a) An LLLT shall not engage in the practice of law while on inactive status, or while suspended from the practice of law for any cause.

(b) An LLLT shall not engage in any of the following with an LLLT or lawyer who is disbarred or suspended, or who has resigned in lieu of disbarment or discipline or whose license has been revoked or voluntarily canceled in lieu of discipline:

(1) practice law with or in cooperation with such an individual;

(2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;

(3) permit such an individual to use the LLLT's name for the practice of law;

(4) practice law for or on behalf of such an individual; or

(5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.

Comment

[1] This Rule was adapted from Lawyer RPC 5.8 with no substantive changes except to incorporate disciplinary dispositions applicable to LLLTs in paragraph (b). Otherwise, this Rule applies to LLLTs analogously.

LLLT RPC 5.9
BUSINESS STRUCTURES INVOLVING LLLT AND
LAWYER OWNERSHIP

(a) Notwithstanding the provisions of Rule 5.4, an LLLT may:

- (1) share fees with a lawyer who is in the same firm as the LLLT;
- (2) form a partnership with a lawyer where the activities of the partnership consist of the practice of law; or
- (3) practice with or in the form of a professional corporation, association, or other business structure authorized to practice law for a profit in which a lawyer owns an interest or serves as a corporate director or officer or occupies a position of similar responsibility.

(b) An LLLT and a lawyer may practice in a jointly owned firm or other business structure authorized by paragraph (a) of this Rule only if:

- (1) LLLTs do not direct or regulate any lawyer's professional judgment in rendering legal services;
- (2) LLLTs have no direct supervisory authority over any lawyer;
- (3) LLLTs do not possess a majority ownership interest or exercise controlling managerial authority in the firm; and
- (4) lawyers with managerial authority in the firm expressly undertake responsibility for the conduct of LLLT partners or owners to the same extent they are responsible for the conduct of lawyers in the firm under Lawyer RPC 5.1.

Comment

[1] This Rule codifies the proposition that LLLTs may enter into fee-sharing arrangements and for-profit business relationships with lawyers. It is an exception to the general prohibition stated in Rule 5.4 that LLLTs may not share fees or enter into business relationships with individuals other than LLLTs. Rule 5.4 governs an LLLT's responsibilities with respect to individuals who are neither LLLTs nor lawyers.

[2] In addition to expressly authorizing intra-firm fee-sharing and business structures between LLLTs and lawyers in paragraph (a), paragraph (b) of the Rule sets forth limitations on the role of LLLTs in jointly owned firms, specifying that regardless of an LLLT's ownership interest in such a firm, the business may not be structured in a way that permits LLLTs directly or indirectly

to supervise lawyers or to otherwise direct or regulate a lawyer's independent professional judgment. This includes a limitation on LLLTs possessing a majority ownership interest or controlling managerial authority in a jointly owned firm, a structure that could result indirectly in nonlawyer decision-making affecting the professional independence of lawyers. Lawyer managers, by contrast, will be required to undertake responsibility for a firm's LLLT owners by expressly assuming responsibility for their conduct to the same extent as they are responsible for the conduct of firm lawyers.

TITLE 6. PUBLIC SERVICE

LLLT RPC 6.1 PRO BONO PUBLICO SERVICE

Every LLLT has a professional responsibility to assist in the provision of legal services to those unable to pay. An LLLT should aspire to render at least thirty (30) hours of pro bono publico service per year. In fulfilling this responsibility, the LLLTs should:

(a) provide legal services without fee or expectation of fee to:

(1) persons of limited means or

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

(b) provide pro bono publico service through:

(1) [Reserved.]

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

Pro bono publico service may be reported annually on a form provided by the WSBA. An LLLT rendering a minimum of fifty (50) hours of pro bono publico service shall receive commendation for such service from the Limited License Legal Technician Board.

Comment

[1] Paragraph (a) of this Rule was adapted from Lawyer RPC 6.1(a) with no substantive changes and applies to LLLTs analogously.

[2] Paragraph (b) of this Rule was adapted from Lawyer RPC 6.1(b) with no substantive changes except that paragraph (b)(1) is reserved. Lawyer RPC 6.1(b)(1) refers to the delivery of pro bono public services to individuals or organizations to secure civil rights, civil liberties or public rights, or to further the organizational purposes of certain not-for-profit organizations and

entities. These kinds of services are beyond the scope of a LLLT's authority under APR 28. Accordingly, Rule 6.1(b)(1) is reserved. Otherwise, this Rule applies to LLLTs analogously.

LLLT RPC 6.2

[Reserved.]

Comment

[1] Lawyer RPC 6.2 relates to appointments by a tribunal for the representation of persons before that tribunal. These kinds of services are beyond the scope of an LLLT's authority under APR 28. Accordingly, Rule 6.2 is reserved.

LLLT RPC 6.3

MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

An LLLT may serve as a director, officer, or member of a legal services organization, apart from the firm in which the LLLT practices, notwithstanding that the organization serves persons having interests adverse to a client of the LLLT. The LLLT 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 LLLT'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 LLLT.

Comment

[1] This Rule was adapted from Lawyer RPC 6.3 with no substantive changes and applies to LLLTs analogously.

LLLT RPC 6.4

LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

An LLLT 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 LLLT. When the LLLT knows that the interests of a client may be materially benefited by a decision in which the LLLT participates, the LLLT shall disclose that fact but need not identify the client.

Comment

[1] This Rule was adapted from Lawyer RPC 6.4 with no substantive changes and applies to LLLTs analogously.

LLLT RPC 6.5

NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICE PROGRAMS

(a) An LLLT 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 LLLT or the client that the LLLT will provide continuing representation in the matter and without expectation that the LLLT will receive a fee from the client for the services provided:

(1) is subject to Rules 1.7, 1.9(a), and 1.18(c) only if the LLLT knows that the representation of the client involves a conflict of interest, except that those Rules shall not prohibit an LLLT from providing limited legal services sufficient only to determine eligibility of the client for assistance by the program and to make an appropriate referral of the client to another program;

(2) is subject to Rule 1.10 only if the LLLT knows that another LLLT or lawyer associated with the LLLT in a firm is disqualified by Rule 1.7 or 1.9(a), or by Lawyer RPC 1.7 or 1.9(a), with respect to the matter; and

(3) notwithstanding paragraph (1) and (2), is not subject to Rules 1.7, 1.9(a), 1.10, or 1.18(c) in providing limited legal services within the authorized scope of the LLLT's practice to a client if:

(i) any program LLLTs or lawyers representing the opposing clients are screened by effective means from information relating to the representation of the opposing client;

(ii) each client is notified of the conflict and the screening mechanism used to prohibit dissemination of information relating to the representation; and

(iii) the program is able to demonstrate by convincing evidence that no material information relating to the representation of the opposing client was transmitted by the personally disqualified LLLTs or lawyers to the LLLT representing the conflicting client before implementation of the screening mechanism and notice to the opposing client.

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

Comment

[1] This Rule was adapted from Lawyer RPC 6.5 with no substantive changes except to reflect that LLLTs and lawyers may practice in the same firm and to reflect the authorized scope of an LLLT's practice. It applies to LLLTs and to firms in which both LLLTs and lawyers are associated analogously.

TITLE 7. INFORMATION ABOUT LEGAL SERVICES

LLLT RPC 7.1

COMMUNICATIONS CONCERNING AN LLLT'S SERVICES

An LLLT shall not make a false or misleading communication about the LLLT or the LLLT's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Comment

[1] This Rule was adapted from Lawyer RPC 7.1 with no substantive changes and applies to LLLTs analogously. *See also* APR 28(H)(1) (prohibiting an LLLT from making any statement that the LLLT can or will obtain special favors from or has special influence with any court or governmental agency).

LLLT RPC 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, an LLLT may advertise services through written, recorded, or electronic communication, including public media.

(b) An LLLT shall not give anything of value to a person for recommending the LLLT's services, except that an LLLT may

(1) pay the reasonable cost of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit LLLT referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to a lawyer or to another LLLT pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the LLLT, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this Rule shall include the name and office address of at least one LLLT or law firm responsible for its content.

Comment

[1] This Rule was adapted from Lawyer RPC 7.2 with no substantive changes except to reflect that client referrals may occur reciprocally between lawyers and LLLTs. It applies to LLLTs analogously.

[2] This Rule prohibits LLLTs from paying others for referrals. *See also* Rule 1.5(e) (prohibiting the division of fees with another LLLT or lawyer who is not in the same firm as the LLLT); Rule 5.4 (subject to Rule 5.9, prohibiting the sharing of fees with anyone who is not an LLLT).

[3] In advertising, an LLLT also has an affirmative obligation to communicate the fact that the LLLT has a limited license to practice in the particular fields of law for which the LLLT is licensed and is prohibited from stating or implying that the LLLT is licensed to practice in any other areas of law, or has an unlimited license to practice law in any area of law. *See* Rule 7.4(a).

LLLT RPC 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) An LLLT shall not directly or through a third person, by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the LLLT's doing so is the LLLT's pecuniary gain, unless the person contacted:

- (1) is a lawyer or an LLLT;
- (2) has a family, close personal, or prior professional relationship with the LLLT; or
- (3) has consented to the contact by requesting a referral from a not-for-profit LLLT referral service.

(b) An LLLT shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone, or real-time electronic contact even when not otherwise prohibited by paragraph (a), if;

- (1) the prospective client has made known to the LLLT a desire not to be solicited by the LLLT; or
- (2) the solicitation involves coercion, duress or harassment.

(c) [Reserved.]

(d) Notwithstanding the prohibitions in paragraph (a), an LLLT may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the LLLT that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment

[1] This Rule was adapted from Lawyer RPC 7.3 with no substantive changes except to reflect that LLLTs may solicit employment from lawyers as well as other LLLTs, and that referral services may refer to both lawyers and LLLTs. This Rule applies to LLLTs analogously.

LLLT RPC 7.4

COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

(a) In all advertising, an LLLT shall communicate the fact that the LLLT has a limited license practice in the particular fields of law for which the LLLT is licensed, and shall not state or imply that an LLLT is licensed to practice in any other areas of law, or has an unlimited license to practice law in any area of law.

(b) [Reserved.]

(c) [Reserved.]

(d) An LLLT shall not state or imply that an LLLT is "certified," a "specialist," or an "expert," or use any other similar term to describe his or her qualifications as an LLLT, but may identify any award or recognition that the LLLT has received from a group, organization, or association. If an LLLT has received any other legal title, credential, or certificate from any group, organization, or association, then the LLLT may identify the legal title, credential, or certificate provided that the reference must:

(1) be truthful and verifiable and otherwise comply with Rule 7.1;

(2) identify the group, organization, or association that issued the legal title, credential, or certificate; and

(3) state that the Supreme Court of Washington does not recognize certification of specialties in the practice of law and that the legal title, credential, or certificate is not a requirement of the LLLT's limited license to practice in the particular fields of law for which the LLLT is licensed.

Comment

[1] An LLLT's license to provide legal services is unique and may not be understood by persons who are not familiar with the limited scope of practice of an LLLT and with the differences between an LLLT and a lawyer. Advertising is designed to help educate the public on the availability of legal services, but advertising by an LLLT may not be false or misleading. *See* Rule 7.1. In order to avoid confusion about the scope of services that an LLLT can provide as distinct from the broader scope of services that a lawyer is authorized to provide, advertising by an LLLT must communicate that an LLLT may deliver legal services only within a limited scope. Accordingly, Rule 7.4(a) differs from Lawyer RPC 7.4(a) in that it requires that all advertising by an LLLT communicate relevant facts concerning the scope of the LLLT's license and expressly prohibits communications that state or imply that the LLLT's license exceeds that scope.

[2] Lawyer RPC 7.4(b) pertains to a patent practice before the United States Patent and Trademark Office, a practice that exceeds the authorized scope of APR 28. Accordingly, Rule 7.4(b) is reserved.

[3] Lawyer RPC 7.4(c) pertains to an admiralty practice, a practice that exceeds the authorized scope of APR 28. Accordingly, Rule 7.4(c) is reserved.

[4] In order to avoid confusion about the scope of services that an LLLT can provide, APR 28(H)(4) prohibits an LLLT from representing or advertising, in connection with the provision of legal services, other legal titles or credentials that could cause a client to believe that the LLLT possesses professional legal skills beyond those authorized by the license held by the LLLT. The terms “certified,” “specialist,” “expert,” and similar terms suggest achievement of skills beyond those that are authorized by the LLLT’s license, and may not be used when describing an LLLT’s credentials. Other titles and recognitions, however, may provide useful information that is not likely to mislead clients or potential clients concerning the skills and authorized scope of an LLLT's practice. Accordingly, if an LLLT has received a legal title, credential, or certificate from a group, organization, or association, the LLLT may identify that title, credential, or certificate so long as communications about it meet the requirements enumerated in Rule 7.4(d)(1)-(3). Those requirements are substantially similar to Lawyer Rule 7.4(d)(1)-(3). An LLLT may also identify awards and recognitions that the LLLT has received from a group, organization, or association.

LLLT RPC 7.5

FIRM NAMES AND LETTERHEADS

(a) An LLLT shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade name may be used by an LLLT in private practice if the trade name does not imply that lawyers are members or employees of the firm unless that is the case, and 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. If there are no lawyers in the firm, any firm name used by an LLLT in private practice shall include the words "Legal Technician."

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers or LLLTs 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 an LLLT or 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 LLLT or lawyer is not actively and regularly practicing with the firm.

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

Comment

[1] This Rule was adapted from Lawyer RPC 7.5 with no substantive changes except that provisions have been added to subpart (a) to require that any trade name not imply that lawyers are members or employees of the firm unless that is the case, and that, if there are no lawyers in the firm, any trade name include the words “Legal Technician.” Otherwise, this Rule applies to LLLTs analogously.

[2] An LLLT’s license to provide legal services is unique and may not be understood by persons who are not familiar with the limited scope of an LLLT's practice and with the differences between an LLLT and a lawyer. A trade name is a brand and is therefore similar to forms of advertising and is often used in advertising. A trade name must not be false or misleading. *See* Rules 7.1 and 7.4. In order to avoid confusion, trade names should communicate the nature of the legal services that a licensed practitioner or firm can deliver. Rule 7.5(a) requires that any trade name communicate relevant facts concerning the scope of the legal services that can be delivered by the legal professional or firm.

LLLT RPC 7.6

POLITICAL CONTRIBUTIONS TO OBTAIN GOVERNMENT LEGAL ENGAGEMENTS OR APPOINTMENTS BY JUDGES

An LLLT or law firm shall not accept a government legal engagement or an appointment by a judge if the LLLT or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

Comment

[1] This Rule was adapted from Lawyer RPC 7.6 with no substantive changes and applies to LLLTs analogously.

TITLE 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

LLLT RPC 8.1

LICENSING, ADMISSION, AND DISCIPLINARY MATTERS

An applicant for an LLLT license, or an LLLT in connection with an application for reinstatement, admission to the Bar, or disciplinary matter involving a legal practitioner 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 a licensing or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Comment

[1] This Rule was adapted from Lawyer RPC 8.1 with no substantive changes. This Rule applies to LLLTs analogously.

LLLT RPC 8.2 JUDICIAL AND LEGAL OFFICIALS

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

(b) [Reserved.]

Comment

[1] Rule 8.2(a) was adapted from Lawyer RPC 8.2(a) with no substantive changes and applies to LLLTs analogously.

[2] Lawyer Rule 8.2(b) pertains to lawyers who are candidates for judicial office. Judges in the judicial branch of the state of Washington must be lawyers. Accordingly, Rule 8.2(b) does not apply to LLLTs and is reserved.

LLLT RPC 8.3 REPORTING PROFESSIONAL MISCONDUCT

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

(b) An LLLT 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 should inform the appropriate authority.

(c) This Rule does not permit an LLLT to report the professional misconduct of another LLLT, a lawyer, or a judge to the appropriate authority if doing so would require the LLLT to disclose information otherwise protected by Rule 1.6.

Comment

[1] This Rule was adapted from Lawyer RPC 8.3 with no substantive changes except to reflect that LLLTs have the same rights and responsibilities with respect to the actions of lawyers that they have with respect to the actions of LLLTs. It applies to LLLTs analogously.

LLLT RPC 8.4 MISCONDUCT

It is professional misconduct for an LLLT to:

(a) violate or attempt to violate the LLLT RPC, 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 LLLT's honesty, trustworthiness, or fitness as an LLLT 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 LLLT Rules of Professional Conduct or other law;

(f) knowingly assist

(1) a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law or

(2) a lawyer in conduct that is a violation of the lawyer Rules of Professional Conduct or other law;

(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the LLLT's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, or marital status. This Rule shall not limit the ability of an LLLT to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward LLLTs, lawyers, judges, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict an LLLT from assisting a client to advance material factual or legal issues or arguments.

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as an LLLT, or otherwise, and whether the same constitutes a felony

or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;

(j) willfully disobey or violate a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;

(k) violate his or her oath as an LLLT;

(l) violate a duty or sanction imposed by or under the ELLLTTC in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELLLTTC 1.5;

(m) [Reserved.];

(n) engage in conduct demonstrating unfitness to practice law; or

(o) violate or attempt to violate APR 28 (F)-(H) or Appendix APR 28 Regulation 2.

Comment

[1] This Rule was adapted from Lawyer RPC 8.4 with no substantive changes except as discussed in these Comments, and otherwise applies to LLLTs analogously.

[2] An LLLT holds a unique form of license to practice law. As a legal professional, an LLLT has a duty to uphold the integrity of the justice system and of those who are authorized to participate in it as judges, lawyers, and LLLTs. Rule 8.4(f)(1) prohibits an LLLT from knowingly assisting a judge or judicial officer in conduct that violates applicable rules of judicial conduct or other law. Rule 8.4(f)(2) adds a prohibition against knowingly assisting a lawyer in conduct that violates the Lawyer RPC or other law. Rule 8.4(f)(2) is substantially identical to Rule 8.4(f)(1) except for its reference to the applicable code of conduct and should be interpreted and applied analogously. Similarly, Rule 8.4(h) has been modified to reflect that an LLLT's obligation to avoid conduct that is prejudicial to the administration of justice extends to an LLLT's conduct toward lawyers.

[3] Lawyer Rule 8.4(m) pertains to lawyers who serve as judges. Judges in the judicial branch of the state of Washington must in nearly all instances be lawyers. Accordingly, because Rule 8.4(m) will have little or no applicability to LLLTs, it is reserved.

[4] LLLTs are subject to discipline when they violate or attempt to violate the LLLT RPC, knowingly assist or induce another to do so, or do so through the acts of another, as when they require or instruct an agent to do so on the LLLT's behalf. In this way, LLLTs are held to the same standards that apply to lawyers. Rule 8.4(o), which does not appear in the Lawyer RPC, states that violating or attempting to violate APR 28(F-H) or Appendix APR 28 Regulation 2 is professional misconduct that subjects an LLLT to discipline.

LLLT RPC 8.5

DISCIPLINARY AUTHORITY

(a) Disciplinary Authority. An LLLT licensed to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the LLLT's conduct occurs.

(b)[Reserved.]

(c) [Reserved.]

Comment

[1] The first sentence of Rule 8.5 was adapted from the first sentence of Lawyer RPC 8.5 with no substantive changes and applies to LLLTs analogously.

[2] An LLLT holds a unique form of license to practice law. Unlike lawyers, LLLTs are not recognized licensed legal practitioners in jurisdictions other than Washington. With the exception of the first sentence of Lawyer RPC 8.5, that rule applies either to the conduct of lawyers from this jurisdiction who practice law in another jurisdiction, lawyers from another jurisdiction who practice law in this jurisdiction, and lawyers who serve as judges or justices. For this reason, paragraphs (b) and (c) are reserved.

[Adopted effective February 3, 2015; Amended effective June 4, 2019.]

APPENDIX

[Reserved.]