PRO BONO REPRESENTATION: ETHICAL CONSIDERATIONS
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Gayle T. Murphy, Esq., VLP Pro Bono Manager
February 8, 2018

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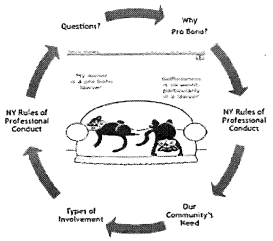
Pro Bono Representation: Ethical Considerations

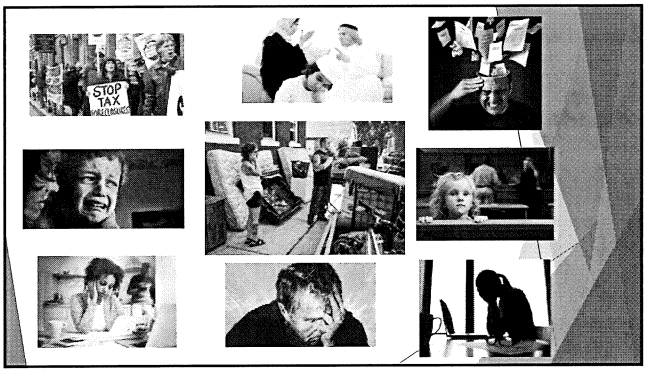
ECBA VOLUNTEER LAWYERS PROJECT

Presented by:
Gayle T. Murphy, Esq., VLP Pro Bono Manager
February 8, 2018

UB Law Alumni Association's GOLD GROUP | GRADUATES OF THE LAST DECADE

Today's Roadmap:



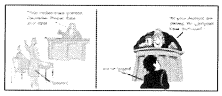


Access to Justice

"Access to the legal system is an inherent right of citizenship, yet far too many New Yorkers are currently denied this right because they lack economic resources."
Former Chief Judge Judith Kaye (6/29/1999)

"As far back as judges and lawyers have existed, the pursuit of equal justice for all, rich and poor alike, has been the hallmark of our profession. Each attorney has an obligation to foster the values of justice, equality, and the rule of law" (Former Chief Judge Jonathan Lippman, Law Day 2010 remarks)

"The greatest threat to the pursuit of justice today—and to the very legitimacy of the justice system—is the desperate need for legal services by the poor and people of modest means. People who are fighting for the necessities of life—the roof over their heads, their physical safety, their livelihoods, and the well-being of their families—literally are falling off the proverbial cliff because they cannot afford legal representation."
Former Chief Judge Jonathan Lippman (2/2017)



Why Pro Bono?

ONE PERSON CAN MAKE A DIFFERENCE, AND EVERYONE SHOULD TRY
-JOHN F. KENNEDY-

Rule 6.1

- *Aspirational Goals*:
- 50 hours service
- Financial contribution

- *Pro Bono Legal Services:*
- Professional legal services in civil and certain criminal matters
- Activities to improve administration of justice
- Professional services to organizations

The Crisis of the Unrepresented in New York Civil Courts

Permanent Commission on Access to Justice 2016 Report

6.12 million New Yorkers live below 200% of the Poverty Level

- 1.8 million low income New Yorkers navigate civil justice system on their own
- 453, 908 cases handled by judicial civil legal services grantees in 2015

- The overall quality of justice for all litigants suffers
- The need is huge

http://www.nycourts.gov/accesstojusticecommission/PDF/2016_Access_to_Justice-Report.pdf

Investment in Civil Legal Services Makes a Difference

- FY 2017/2018 Judiciary Civil Legal Services funding totaled **$100 Million**
- Since 2010, civil legal needs of low income New Yorkers being met increased from **20% to 37%**
- In Fourth Department civil legal service grantees cases handled **over 12,000 more** cases since 2013/2014 fiscal year
- **"New York State has indeed become the undisputed national leader when it comes to serving the civil legal needs of low-income individuals.... we know that the progress we have made is far from complete and that we still face some very daunting challenges."** Chief Judge Janet DiFiore (9/18/17)
- https://www.nycourts.gov/accesstojusticecommission/PDF/2017-ATJ-Commission-Report.pdf

Why Do They Need Your Help?

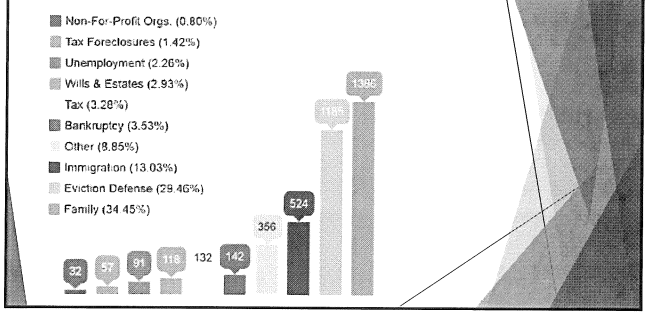
- **4th poorest** among U.S. major cities
  - **30.5 %** Buffalonians living in poverty
    - **$24,300** (or less) a year for family of 4
  - **54%** of Buffalo's children live in poverty
  - **58%** children 5 and under live in poverty
  - More than **82%** of Buffalo students economically disadvantaged

VLP Helped People in Need 2016

Our staff:
- **20** full time attorneys
- **10** support staff

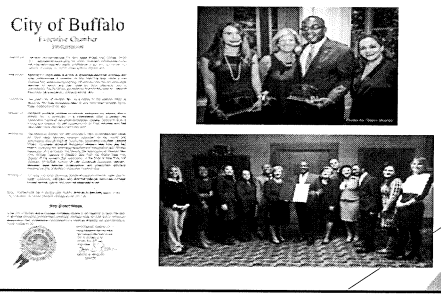
2016 stats:
- **400+** volunteer attorneys
- Nearly **$1 million** in free legal services provided by pro bono lawyers
- **$1.8** million in free legal services provided by VLP staff
- **$8.4 million** in benefits to clients and taxpayers
- Statewide & local award winners
- **4023** cases - **9934** people benefitted
- **2507** pro bono cases - **6687** people benefitted

VLP Case Types 2016



Access to Justice Champions

Pro Bono in Buffalo



Benefits of Volunteering at VLP

- Attorneys can meet 50 hour aspirational goal, reported biannually
- Contribute to the Bar's proud history of Public Service
- Gain valuable CLE credits and pro bono hours
- Free live or online trainings
- Malpractice insurance
- Technical support
- Mentoring and networking

Some Updates on Pro Bono Reporting

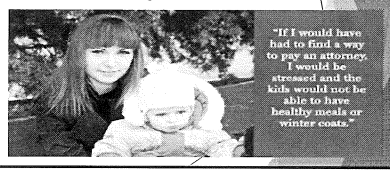
- **NY Bar Admission & 50 Hour Rule**
  - Applies to admissions occurring after 1/1/2015
  - "It is so important that the next generation of lawyers in New York embraces the core values of our profession that so fundamentally include pro bono legal assistance"
    -Former Chief Judge Lippman
- **Mandatory Reporting of Voluntary Pro Bono**
  - 22 NYCRR 118.11 (14)
  - Effective May 1, 2015
  - Anonymous
  - Report activity from preceding 2 calendar years
  - All attorneys must file unless exempt

Valuable Pro Bono CLE Credits

- **Credit for eligible pro bono legal services**
- Ratio: one (1) CLE credit hour for every two (2) 60- minute hours (120 minutes) of eligible pro bono legal services.
- A maximum of ten (10) pro bono CLE credit hours may be earned during any one reporting cycle.
- Credit shall be calculated in increments of one-half (.5) CLE credit hour.
- Ethics and professionalism credit is not available for participation in pro bono CLE activities.
- **Newly Admitted Attorneys & Pro Bono CLE Credits**
- Newly admitted attorneys may earn pro bono CLE credit solely for the purpose of carrying over the pro bono credit to the following biennial reporting cycle.
- A maximum of 6 CLE credit hours, including pro bono CLE credit, may be carried over to the following reporting cycle.

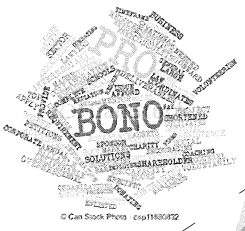
Civil Legal Matters Handled by VLP Pro Bono Attorneys

- Immigration
- Eviction Defense
- Non-Parent Custody
- Child Support
- Divorce
- Income Tax
- Guardianship
- Bankruptcy
- Wills & Power of Attorney
- Unemployment
- Tort Defense
- Collection Defense
- Name Change

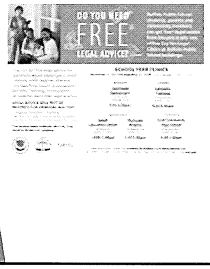


Help for Non-Profit Organizations

- Incorporation
- Tax Exempt Status
- Zoning Problems
- Insurance Questions
- Building Code
- Drafting Constitutions and By-Laws
- Navigating Federal, State and Local Governments
- General Business and Corporate Advice



Limited Scope Programs



Ethical Considerations: Ongoing Representation and Limited Scope




Ongoing Representation: Selected Rules of Professional Conduct

- Rule 1.1 Competence
- Rule 1.3 Diligence
- Rule 1.4 Communication
- Rule 1.5 Fees & Division of Fees
  - Judiciary Law Section 35(8)
- Rule 1.6 - 1.10 Confidentiality/Conflicts
- Rule 1.14 Client with Diminished Capacity

NY Rule 6.5: What are Short-Term Limited Legal Services?

- Legal advice or representation free of charge
- Court, government agency, bar association or not-for-profit legal services organization sponsored program
- No expectation that the assistance will continue beyond what is necessary to complete an initial consultation, representation or court appearance
- Required informed consent

Ethical Considerations of Limited Scope Representation: ABA Model Rule 6.5

- Responsive to ABA 2000 Ethics Commission's concern that strict application of conflict-of-interest rules could deter lawyers from volunteering in short-term limited legal services programs

Selected Rules of Professional Conduct

- Rule 1.6 Confidentiality of Information
- Rule 1.7 Conflict of Interest: Current Clients
- Rule 1.8 Current Clients: Specific Conflict of Interest Rules
- Rule 1.9 Duties to Former Clients
- Rule 1.10 Imputation of Conflicts of Interest

Rule 1.6 Confidentiality of Information

- Rule 1.6
- **A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person...**
  - Carve outs:
    - Informed consent
    - Impliedly authorized and reasonable, or
    - Permitted by paragraph (b)
      - to prevent reasonably certain death or substantial bodily harm;
      - to prevent the client from committing a crime;
      - to withdraw a written or oral opinion or representation previously given by the lawyer
      - to secure legal advice about compliance with these Rules or other law by the lawyer, another lawyer associated with the lawyer's firm or the law firm;
      - (i) to defend the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct; or (ii) to establish or collect a fee; or
      - when permitted or required under these Rules or to comply with other law or court order.

Rule 1.7
Conflict of Interest: Current Clients

- A lawyer **shall not** represent a client if a reasonable lawyer would conclude that either:
  - the representation will involve the lawyer in representing differing interests; or
  - there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.
- "Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if..."
  - the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - the representation is not prohibited by law;
  - 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
  - each affected client gives informed consent, confirmed in writing

Rule 1.8
Current Clients: Specific Conflict Rules

- Entering into business transactions with clients
- Using client information to the detriment of the client
- Soliciting and using client gifts
- Literary and media use
- Advancing or guaranteeing financial assistance from lawyer to client
- Accepting compensation from other than client
- Representing more than one client in settlement
- Acquiring proprietary interest in cause of action or subject
- Engaging in sexual relations with clients

Rule 1.9
Duties to Former Clients

- Written client consent required for a lawyer to 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
- Similar rules for clients of lawyers former law firm
- Protection of former client's confidential information

Rule 1.10
Imputation of Conflicts of Interest

- Current association with firm
- Former association with firm
- Newly associated attorney rules
- Waiver
- Conflict checking requirements
- Lawyers and family members

"We're able to cut back on legal fees by being more ethical."

Opinion 1012 Clarifies Conflicts & Rule 6.5

NEW YORK STATE BAR ASSOCIATION
One Elk Street, Albany, New York 12207 ☐ PH 518 463 3200 ☐ www.nysba.org

New York State Bar Association
Committee on Professional Ethics

Opinion 1012 (7-30-2014)

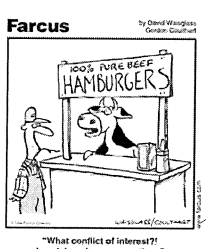
Topic: Conflicts arising from limited-services pro bono representation

Digest: A lawyer who represents a client in a limited pro bono legal services program owes a continuing duty of confidentiality to that client, and is precluded from later representing a materially adverse client in the same or a substantially related matter if the lawyer has actual knowledge of the unwaived conflict, but conflicts arising from participation in such a program are not imputed to others in the lawyer's firm

Rules: 1.6, 1.7, 1.9, 1.10, 5.1, 6.5

Opinion 1012: Four Step Analysis

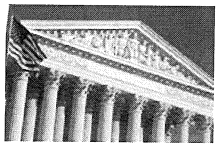
- Limited Scope Legal Assistance Program
- Requires Actual Knowledge of the Conflict
- Continuing Duty of Confidentiality to Program Client
  - Precluded from subsequent representation of materially adverse client in same/substantially same matter
- Program Lawyer's Conflicts NOT IMPUTED to others in the law firm



"What conflict of interest?! I work here in my spare time."

Closing Thoughts

- "Equal justice under law is not merely a caption on the facade of the Supreme Court building; it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists . . . it is fundamental that justice should be the same, in substance and availability, without regard to economic status."
- - Justice Lewis F. Powell, Jr., U.S. Supreme Court Justice (Ret.), during his tenure as president of the American Bar Association (August 1976)



For More Info on Getting Involved

ECBA VOLUNTEER LAWYERS PROJECT

ERIE COUNTY BAR ASSOCIATION

VOLUNTEER LAWYERS PROJECT, INC.

"Speaking for those who are not heard"

438 Main St., 7th Floor
Buffalo, NY 14202

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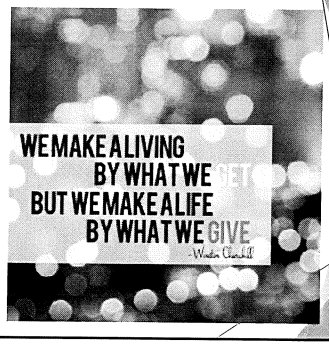
Thank You!



11. **Pro Bono Legal Services**—Credit may be earned for performing eligible pro bono legal services for clients unable to afford counsel pursuant to (i) assignment by a court or (ii) participation in a pro bono CLE program sponsored by an Approved Pro Bono CLE Provider. CLE credit shall not be awarded for pro bono legal services performed outside of New York State.

a. **Definitions**

i. **Eligible pro bono legal services** are (1) legal services for which there is no compensation to the attorney performing the legal services or (2) legal services for which the compensation to the attorney performing the legal services is provided by someone other than the recipient of those services, and such compensation would be provided regardless of whether the attorney performed those services. Legal services provided by assigned counsel who receive compensation for those services from any source and/or legal services provided by legal services organization attorneys within the scope of their employment, are not eligible pro bono legal services.

ii. A **pro bono CLE program** is a program, activity or case that is sponsored by, and to which attorneys are assigned by an Approved Pro Bono CLE Provider, and in which all recipients of the legal services provided by the program have been screened for financial eligibility.

b. **Court Assignment**—Pro Bono CLE credit may be earned for the provision of eligible pro bono legal services to clients unable to afford counsel, pursuant to assignment by a court.

c. **Approved Pro Bono CLE Providers**

i. **Eligibility**—Eligibility for designation by the CLE Board as an Approved Pro Bono CLE Provider is limited to the following organizations:

(1) Legal services organizations, or subsidiaries or subdivisions thereof, that have as their primary purpose the furnishing of legal services to indigent persons and that have filed a statement with the Appellate Division in the Judicial Department in which their principal office is located, pursuant to New York Judiciary Law §496; or

(2) Subsidiaries or programs of bar associations that have as their primary purpose the furnishing of legal services to indigent persons.

ii. **Approval** – An eligible organization seeking to become an Approved Pro Bono CLE Provider must submit to the CLE Board a letter requesting approval. The letter shall include a description of the organization's pro bono CLE programs and the name of a pro bono CLE contact person at the organization. The organization requesting approval as an Approved Pro Bono CLE Provider shall be furnished with written notice of the CLE Board's determination to approve, conditionally approve or deny the request by first class mail at the address reflected on the letter requesting approval. Pro bono CLE programs sponsored by Approved Pro Bono CLE Providers are deemed approved for pro bono CLE credit for a period of three (3) years from the date of the CLE Board's approval of the Pro Bono CLE Provider.

d. **Calculation of Credit** – Credit for eligible pro bono legal services shall be earned in the following ratio: one (1) CLE credit hour for every two (2) 60-minute hours (120 minutes) of eligible pro bono legal services. A maximum of ten (10) pro bono CLE credit hours may be earned during any one reporting cycle. Credit shall be calculated in increments of one-half (.5) CLE credit hour. Ethics and professionalism credit is not available for participation in pro bono CLE activities.

e. **Attorney Obligations** – In order to receive pro bono CLE credit, attorneys shall maintain records of their participation in pro bono CLE activities as follows:

i. **Court Assignment** – An attorney who performs eligible pro bono legal services pursuant to assignment by a court shall maintain time records and calculate the CLE credit hours earned pursuant to section 3(D)(11)(d), above. The attorney shall retain for a period of four (4) years the time records, the CLE credit hour calculation and a copy of the court order assigning the attorney to the pro bono activity.

ii. **Pro Bono CLE Program Assignment** – An attorney who performs eligible pro bono legal services for a pro bono CLE program pursuant to assignment by an Approved Pro Bono CLE Provider shall complete an affirmation describing the services provided, and stating the number of hours of eligible pro bono legal service that the attorney performed. The attorney shall submit the affirmation to the sponsoring Approved Pro Bono CLE Provider. The attorney shall retain for a period of four (4) years the time records of the attorney's participation in eligible pro bono legal services, a copy of the attorney's affirmation and the Letter of Participation issued to the attorney by the Approved Pro Bono CLE Provider as set forth in section 3(D)(11)(f)(i), below.

f. **Obligations of Approved Pro Bono CLE Providers**

i. **Letters of Participation**—Approved Pro Bono CLE Providers shall furnish participating attorneys with a Letter of Participation indicating: (1) the name of the Approved Pro Bono CLE Provider, (2) the date(s) of assignment, and the location and name, if applicable, of the pro bono CLE program, (3) the name of the attorney participant, (4) the number of hours of eligible pro bono legal service provided by the attorney pursuant to section 3(D)(11)(e)(ii), above and (5) the number of pro bono CLE credit hours earned, calculated pursuant to section 3(D)(11)(d), above.

ii. **Participation List**—Approved Pro Bono CLE Providers shall retain for a period of four (4) years a list of participants in each pro bono CLE program along with the number of hours of eligible pro bono legal service claimed and the number of pro bono CLE credit hours earned by each participant.

iii. **Year-End Reports**—Approved Pro Bono CLE Providers shall complete and submit to the CLE Board a year-end report at the end of each calendar year during which the organization has been an Approved Pro Bono CLE Provider. The report shall contain information for pro bono CLE programs sponsored during the calendar year, including: (1) the total number of pro bono CLE programs sponsored, (2) the total number of attorneys participating in the pro bono CLE programs, (3) the total number of attorneys to whom Letters of Participation were issued, (4) the total number of pro bono CLE credits issued and (5) the total pro bono CLE hours reported on attorney affirmations.

g. **Carry-Over Credit for Newly Admitted Attorneys**—Newly admitted attorneys may earn pro bono CLE credit as set forth in this section 3(D)(11), solely for the purpose of carrying over pro bono CLE credit to the following biennial reporting cycle in partial fulfillment of the requirements for experienced attorneys. A maximum of six (6) CLE credit hours, including pro bono CLE credit, may be carried over to the following biennial reporting cycle. Newly admitted attorneys may not apply pro bono CLE credit to their minimum requirements as set forth in §1500.12(a) of the Program Rules and section 2(A) of these Regulations and Guidelines. Newly admitted attorneys shall maintain records of their participation in pro bono CLE activities as set forth in section 3(D)(11)(e), above, and shall retain those records for a period of six (6) years.

h. **Effective Date**—Pro bono CLE credit pursuant to this section D(11) may be earned only for eligible pro bono legal services performed after January 1, 2000. *[Calculation of Credit, 3(D)(11)(d), revised effective February 15, 2012.]*

personally upon the applicant, in any action or proceeding thereafter brought against the applicant and arising out of or based upon any legal services rendered or offered to be rendered by the applicant within the State.

(b) Any such applicant may, at any time after being admitted to practice, revoke a designation filed with the Appellate Division pursuant to subdivision (a) of this section by executing and filing with such Appellate Division an affidavit revoking such designation and showing that, as of the date of such affidavit, the applicant resides or is employed full-time in the State or has an office therein for the practice of law; except such revocation shall be effective only with respect to causes of action accruing after the filing thereof.

(c) Service of process on the clerk of the Appellate Division, pursuant to a designation filed pursuant to subdivision (a) of this section, shall be made by personally delivering to and leaving with such clerk, or with a deputy or assistant authorized to receive such service at the clerk's office, duplicate copies of the process together with a fee of $25. Service of process shall be complete when such clerk has been so served. Such clerk shall promptly send one copy of the process to the person to whom it is directed, by certified mail, return receipt requested, addressed to such person at the address specified in the designation or at such other address as such person shall have specified in a duly acknowledged supplemental instrument in writing which such person shall have filed in the office of such clerk.

§ 520.14 Application for Waiver of Rules

The Court of Appeals, upon application, may in its discretion vary the application of or waive any provision of these rules where strict compliance will cause undue hardship to the applicant. Such application shall be in the form of a verified petition setting forth the applicant's name, age and residence address, the facts relied upon and a prayer for relief.

§ 520.15 Rules of the New York State Board of Law Examiners

The New York State Board of Law Examiners may from time to time adopt, amend or rescind rules, not inconsistent with these Rules, as it shall deem necessary and proper to enable it to discharge its duties as such duties are established by Law and by these rules. The rules so established by the Board shall not be adopted, amended or rescinded except by a majority vote of the members thereof.

A copy of each rule, adopted, amended or rescinded must, within 30 days of such action, be filed in the office of the Secretary of State.

§ 520.16 Pro Bono Requirement for Bar Admission

(a) Fifty-hour pro bono requirement. Every applicant admitted to the New York State bar on or after January 1, 2015, other than applicants for admission without examination pursuant to section 520.10 of this Part, shall complete at least 50 hours of qualifying pro bono service prior to filing an application for admission with the appropriate Appellate Division department of the Supreme Court.

(b) Pro bono service defined. For purposes of this section, pro bono service is supervised pre-admission law-related work that:

(1) assists in the provision of legal services without charge for

(i) persons of limited means;
(ii) not-for-profit organizations; or
(iii) individuals, groups or organizations seeking to secure or promote access to justice, including, but not limited to, the protection of civil rights, civil liberties or public rights;

(2) assists in the provision of legal assistance in public service for a judicial, legislative, executive or other governmental entity; or

(3) provides legal services pursuant to subdivisions two and three of section 484 of the Judiciary Law, or pursuant to equivalent legal authority in the jurisdiction where the services are performed.

(c) Supervision required. All qualifying pre-admission pro bono work must be performed under the supervision of:

(1) a member of a law school faculty, including adjunct faculty, or an instructor employed by a law school;

(2) an attorney admitted to practice and in good standing in a jurisdiction, provided that the supervisory work does not violate any statute, regulation or code regarding the unauthorized practice of law; or

(3) in the case of a clerkship or externship in a court system, by a judge or attorney employed by the court system.

(d) Location of pro bono service. The 50 hours of pro bono service, or any portion thereof, may be completed in any state or territory of the United States, the District of Columbia, or any foreign country.

(e) Timing of pro bono service. The 50 hours of pro bono service must be performed on or after May 1, 2012 and after the commencement of the applicant's legal studies, and prior to filing an application for admission to the New York State bar. However, if the applicant attended an approved law school as defined in section 520.3(b) of this Part and will be admitted on or before December 31, 2015, eligible pro bono work may have been performed before May 1, 2012, provided it was performed after the commencement of the applicant's legal studies.

(f) Proof required. Every applicant for admission shall file with the appropriate Appellate Division department an Affidavit of Compliance with the Pro Bono Requirement, describing the nature and dates of pro bono service and the number of hours completed. The Affidavit of Compliance shall include a certification by the supervising attorney or judge confirming the

applicant's pro bono activities. For each position used to satisfy the 50-hour requirement, the applicant shall file a separate Affidavit of Compliance.

(g) Prohibition on political activities. An applicant may not satisfy any part of the 50-hour requirement by participating in partisan political activities.

§ 520.17 Pro Bono Scholars Program

(a) General. The Pro Bono Scholars Program is a voluntary component of legal education that provides law student participants in their final semester of study with an opportunity to assist in improving access to justice for persons of limited means while acquiring practical legal skills training. The program is administered by the Chief Administrator of the Courts or a designee and provided through approved law schools in the United States.

(b) Eligibility. A student may participate in the Pro Bono Scholars Program upon proof that:

(1) the student is enrolled in the final semester of law school study in a first degree in law program at an approved law school in the United States, as that term is defined in section 520.3 of this Part, and satisfies any eligibility requirements set by the student's law school; and

(2) upon successful completion of the Pro Bono Scholars Program the student will have satisfied:

(i) the instructional and academic calendar requirements of section 520.3(c) and (d) of this Part; and
(ii) the necessary requirements for graduation at the student's law school, and will be awarded a first degree in law.

(c) Program requirements. A student enrolled in the Pro Bono Scholars Program must complete:

(1) the New York State bar examination administered during the final semester of the student's law school study;

(2) at least 12 weeks of full-time pro bono work at a placement approved by the student's law school and the Chief Administrator or a designee, where such work will be supervised by an attorney admitted to practice in the jurisdiction where the work is performed and by a faculty member of the student's law school; and

(3) a concomitant academic component at an approved law school in the United States, and any other academic requirements set by the student's law school.

(d) Law school credit. A student who completes the Pro Bono Scholars Program must receive at least 12 academic credits for participation in the program.

(e) Pro bono service defined. For purposes of this section, pro bono service is full-time supervised law-related work that assists in the provision of legal services for:

(1) persons who are financially unable to pay for legal representation;

(2) not-for-profit legal service providers that predominantly address the legal needs of indigent clients where the work performed is for such clients; or

(3) governmental entities, so long as the work performed is on behalf of identifiable individuals who are financially unable to afford representation or whose unmet legal needs prevent their access to justice.

(f) Bar examination and accelerated admission to the bar. A student who participates in the Pro Bono Scholars Program must complete the New York State bar examination during the student's final semester of law study, provided the student's law school submits certification to the New York State Board of Law Examiners that the student, upon successful completion of the Pro Bono Scholars Program, will meet the requirements of section 520.3(c) and (d) of this Part and will be awarded a first degree in law. The State Board of Law Examiners shall not certify the student for admission to the bar pursuant to section 520.7(a) of this Part until the student has presented proof that the student has successfully completed the Pro Bono Scholars Program and has been awarded a first degree in law.

(g) Noncompliance. A student enrolled in the Pro Bono Scholars Program must complete all program requirements by the date established by the Chief Administrator or a designee and by the student's law school. The deadline for program compliance may be extended only in exceptional circumstances and upon a written request by the student's law school, submitted to the Chief Administrator or a designee, setting forth the specific reasons for the student's inability to timely complete the program. The determination whether to extend the deadline is within the discretion of the Chief Administrator or a designee. Absent a showing of exceptional circumstances, the failure to complete the program requirements by the deadline will result in the student's bar examination results being voided.

(h) Delegation of authority. The administrative power for the implementation and oversight of the Pro Bono Scholars Program, including, without limitation, the power to set forth requirements for the program's operation not inconsistent with any provision of this section, is vested in the Chief Judge or the Chief Administrator.

§520.18 Skills Competency Requirement for Admission

(a) General. Every applicant for admission to practice, other than applicants for admission without examination pursuant to section 520.10 of this Part, or applicants who qualify for the bar examination under section 520.4 or 520.5 of this Part, shall demonstrate that the applicant possesses the skills and values necessary to provide effective, ethical and responsible legal

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The Legal Profession - Pro Bono

FAQs - Pro Bono Reporting Requirements - Attorney Registration

Reporting of Voluntary Pro Bono Service & Financial Contributions

HOW DO THE REVISIONS TO THE PRO BONO REPORTING REQUIREMENT (22NYCRR§118.1(14)), EFFECTIVE AS OF MAY 1, 2015, AFFECT MY REGISTRATION FILING?

HOW DO I FILL OUT THE NEW ANONYMOUS REPORT OF VOLUNTARY PRO BONO SERVICES AND CONTRIBUTIONS?

EXEMPT ATTORNEYS-FILING THE NEW ANONYMOUS REPORT

HOW DO THE REVISIONS TO THE PRO BONO REPORTING REQUIREMENT (22NYCRR§118.1(14)), EFFECTIVE AS OF MAY 1, 2015, AFFECT MY REGISTRATION FILING?

1. How do the changes to the Pro Bono Reporting Requirement (22NYCRR§118.1(14)), effective as of May 1, 2015, affect my reporting of pro bono?

Effective as of May 1, 2015, the required reporting of pro bono services and financial contributions is made anonymously, separate and apart from the attorney registration form, on the new **Anonymous Report of Voluntary Pro Bono Services and Contributions**. In addition, the categories of pro bono services and financial contributions that *may* be reported have been expanded to include voluntary and unpaid public, community, or charitable service.

2. Under the revised rule, who must file the new Anonymous Report?

Under the revised rule, **all attorneys** who are admitted to practice in New York State must submit the Anonymous Report when they register. (Retired attorneys as defined in 22NYCRR§118.1(g) and attorneys employed by legal services providers continue to be "exempt" from reporting pro bono service details, but are required to submit the form to confirm their exempt status.)

3. How do I file the required Anonymous Report of Voluntary Pro Bono Services and Contributions?

(a)If you register by mail, you will receive a copy of the Anonymous Report along with your registration form and two return envelopes. The Anonymous Report should be mailed in the blue envelope provided.
(b) If you register online, you will be linked to an electronic version of the Anonymous Report, which is submitted online and stored anonymously.

4. Am I required to maintain records of pro bono service and contributions, or a copy of the Anonymous Report?

While it is recommended that attorneys maintain a copy of their Anonymous Report, there is no requirement to do so, nor that attorneys keep records of the amount of their pro bono service and contributions.

5. Under the 2015 revised reporting requirement, am I mandated to perform pro bono legal services?

No. Pro bono legal service by attorneys admitted in New York is completely voluntary. Only the reporting of such services and contributions is mandatory.

6. How do I fill out the Anonymous Report if I have no pro bono services or financial contributions to report?

For those attorneys required to complete Section IV of the Anonymous Report (see below), enter "0" if you have no hours of service or financial contributions to report.

7. Have the May 1, 2015 revisions changed who is considered to be Exempt from reporting?

No, retired attorneys as defined in 22NYCRR§118.1(g) and attorneys employed by legal services providers continue to be "exempt" from reporting pro bono service details, but are required to submit the Anonymous Report to confirm their exempt status. See below.

HOW DO I FILL OUT THE NEW ANONYMOUS REPORT OF VOLUNTARY PRO BONO SERVICES AND CONTRIBUTIONS?

8. What is the term of the reporting requirement on the Anonymous Report?

Data entered on the Anonymous Report should reflect the two-year time period ending on December 31 of the year preceding registration filing. For example, if you file during 2015, you should report information for the period January 1, 2013 through December 31, 2014. Similarly, if you file during 2016, you should report information for the period January 1, 2014 through December 31, 2015.

9. Section III. What do I do if I don't know my Judicial District?

Attorneys are asked to identify the location of their principal place of business. If that location is within New York State, but outside New York City, please check the appropriate box for the Judicial District in which your office is located. The Chart on NYS Judicial Districts contains a list of those districts, matched by county.

10. How do I list my various pro bono services and contributions on the new Anonymous Report?

The new Anonymous Report has three separate sections—IV, V and VI-- for reporting pro bono efforts. Section IV is mandatory for all attorneys, except those who are exempt; sections V and VI are voluntary for all attorneys.

(a) Section IV, Rule 6.1 Pro Bono Legal Services and Charitable Contributions
All attorneys, *except those who are exempt*, must, in this section, report the number of hours of unpaid legal services performed and funds contributed to legal services organizations, in accordance with Rule 6.1 of the Rules of Professional Conduct. In accordance with Rule 6.1(c), appropriate organizations for financial contributions are:

(1) organizations primarily engaged in the provision of legal services to the poor; and

(2) organizations substantially engaged in the provision of legal services to the poor, provided that the donated funds are to be used for the provision of such legal services.

This is the same information that was required to be reported prior to the May 1, 2015 revision. Rule 6.1, Voluntary Pro Bono Service, remains unchanged

(b) Section V, Other Pro Bono Services and Contributions
This new, totally voluntary section, provides the opportunity for any attorney (whether exempt or non-exempt), to report charitable and pro bono services and contributions that fall outside the scope of those required to be reported

under Section IV. In voluntarily answering Section V, you should not repeat information already mandatorily reported in Section IV.

For purposes of this section, reportable charitable activities and financial contributions are not restricted to those related to providing legal services for the poor. Under Section V, attorneys may report the total number of hours of any voluntary and unpaid public, community, or charitable service performed, as well as the total amount of all charitable contributions made to any institution, person or cause.

This section also gives attorneys the opportunity to report legal services performed for the public good, at a rate substantially below their normal billing rate. While we have suggested a billing discount rate of at least 40% for this reporting purpose, this figure is only a suggestion; attorneys may report services at a smaller discount rate if they choose. (Do not include fees that were intended to be billed and collected but could not be collected.)

(c) Section VI, Details of Reported Service and Contributions
Section IV (mandatory reporting) and Section V (voluntary reporting) ask for numerical responses. Section VI, a new, totally voluntary section, offers you the opportunity, should you choose to do so, to provide any additional details about the service and contributions numerically reported in Sections IV and V.

11. What are some examples of the types of services and contributions that are voluntarily reportable under Sections V and VI?

Voluntary services and financial contributions can be for any public, community, or charitable service. For example, they might benefit the arts, the elderly, education, disaster assistance, religious entities, or youth programs. Voluntary legal services include, but are not limited to, unpaid volunteer work of a legal nature on not-for-profit boards and for bar associations, and voluntary mediation or arbitration.

EXEMPT ATTORNEYS-FILING THE NEW ANONYMOUS REPORT

12. If my status is "Exempt," do I still have to file an Anonymous Report?

Yes, all attorneys registered in NYS are required to submit the new Anonymous Report. *On the Anonymous Report, exempt attorneys are required only to confirm their exempt status.* If you are exempt, you may, at your option, respond to additional questions on the form and voluntarily report your pro bono service and financial contributions, but there is no requirement to do so. Whether you choose to report such service and contributions is up to you, but you still must file an Anonymous Report.

The Administrative Board of the Courts has determined that attorneys who are "retired" from the practice of law as defined in 22 NYCRR §118.1(g), and attorneys employed by an organization primarily engaged in the provision of pro bono legal services (for example, a legal services agency, legal aid society, defenders organization, or similar group), are exempt from this mandatory reporting requirement. These attorneys may simply check the "Exempt" box and submit without further information. However, even if you check "Exempt", you may voluntarily choose to report your pro bono service and complete the remainder of the form.

NEW YORK STATE UNIFIED COURT SYSTEM

PART 1200

RULES OF PROFESSIONAL CONDUCT

Dated: January 1, 2017

These Rules of Professional Conduct were promulgated as Joint Rules of the Appellate Divisions of the Supreme Court, effective April 1, 2009, and amended on several occasions thereafter. They supersede the former part 1200 (Disciplinary Rules of the Code of Professional Responsibility).

The New York State Bar Association has issued a Preamble, Scope and Comments to accompany these Rules. They are not enacted with this Part, and where a conflict exists between a Rule and the Preamble, Scope or a Comment, the Rule controls.

This unofficial compilation of the Rules provided for informational purposes only. The official version of Part 1200 is published by the New York State Department of State. An unofficial on-line version is available at www.dos.ny.gov/info/nycrr.html (Title 22 [Judiciary]; Subtitle B Courts; Chapter IV Supreme Court; Subchapter E All Departments; Part 1200 Rules of Professional Conduct; § 1200.0 Rules of Professional Conduct).

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PART 1200 - RULES OF PROFESSIONAL CONDUCT

RULE 1.0.

Terminology

(a) "Advertisement" means any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm's services, the primary purpose of which is for the retention of the lawyer or law firm. It does not include communications to existing clients or other lawyers.

(b) "Belief" or "believes" denotes that the person involved actually believes the fact in question to be true. A person's belief may be inferred from circumstances.

(c) "Computer-accessed communication" means any communication made by or on behalf of a lawyer or law firm that is disseminated through the use of a computer or related electronic device, including, but not limited to, web sites, weblogs, search engines, electronic mail, banner advertisements, pop-up and pop-under advertisements, chat rooms, list servers, instant messaging, or other internet presences, and any attachments or links related thereto.

(d) "Confidential information" is defined in Rule 1.6.

(e) "Confirmed in writing" denotes (i) a writing from the person to the lawyer confirming that the person has given consent, (ii) a writing that the lawyer promptly transmits to the person confirming the person's oral consent, or (iii) a statement by the person made on the record of any proceeding before a tribunal. If it is not feasible to obtain or transmit the writing at the time the person gives oral consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(f) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(g) "Domestic relations matter" denotes representation of a client in a claim, action or proceeding, or preliminary to the filing of a claim, action or proceeding, in either Supreme Court or Family Court, or in any court of appellate jurisdiction, for divorce, separation, annulment, custody, visitation, maintenance, child support or alimony, or to enforce or modify a judgment or order in connection with any such claim, action or proceeding.

(h) "Firm" or "law firm" includes, but is not limited to, a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other

association authorized to practice law; or lawyers employed in a qualified legal assistance organization, a government law office, or the legal department of a corporation or other organization.

(l) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction or has a purpose to deceive, provided that it does not include conduct that, although characterized as fraudulent by statute or administrative rule, lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations that can be reasonably expected to induce detrimental reliance by another.

(j) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated information adequate for the person to make an informed decision, and after the lawyer has adequately explained to the person the material risks of the proposed course of conduct and reasonably available alternatives.

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

(l) "Matter" includes any litigation, judicial or administrative proceeding, case, claim, application, request for a ruling or other determination, contract, controversy, investigation, charge, accusation, arrest, negotiation, arbitration, mediation or any other representation involving a specific party or parties.

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

(n) "Person" includes an individual, a corporation, an association, a trust, a partnership, and any other organization or entity.

(o) "Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

(p) "Qualified legal assistance organization" means an office or organization of one of the four types listed in Rule 7.2(b)(1)-(4) that meets all of the requirements thereof.

(q) "Reasonable" or "reasonably," when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer. When used in the context of conflict of interest determinations, "reasonable lawyer" denotes a lawyer acting from the perspective of a reasonably prudent and

competent lawyer who is personally disinterested in commencing or continuing the representation.

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

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

(t) "Screened" or "screening" 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 or the firm is obligated to protect under these Rules or other law.

(u) "Sexual relations" denotes sexual intercourse or the touching of an intimate part of the lawyer or another person for the purpose of sexual arousal, sexual gratification or sexual abuse.

(v) "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

(w) "Tribunal" denotes a court, an arbitrator in an 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 legal judgment directly affecting a party's interests in a particular matter.

(x) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photocopying, photography, audio or video recording, e-mail or other electronic communication or any other form of recorded communication or recorded representation. A "signed" writing includes an electric 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.

RULE 1.1.

Competence

(a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A lawyer shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.

(c) lawyer shall not intentionally:

(1) fail to seek the objectives of the client through reasonably available means permitted by law and these Rules; or

(2) prejudice or damage the client during the course of the representation except as permitted or required by these Rules.

RULE 1.2.

Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to the provisions herein, a lawyer 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. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

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

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, except that the lawyer may discuss the legal consequences of any proposed course of conduct with a client.

(e) A lawyer may exercise professional judgment to waive or fail to assert a right or position of the client, or accede to reasonable requests of opposing counsel, when doing so does not prejudice the rights of the client.

(f) A lawyer may refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.

(g) A lawyer does not violate these Rules by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, and by treating with courtesy and consideration all persons involved in the legal process.

RULE 1.3.

Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not neglect a legal matter entrusted to the lawyer.

(c) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but the lawyer may withdraw as permitted under these Rules.

RULE 1.4.

Communication

(a) A lawyer shall:

(1) promptly inform the client of:

(i) any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(j), is required by these Rules;

(ii) any information required by court rule or other law to be communicated to a client; and

(iii) material developments in the matter including settlement or plea offers.

(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 a client's reasonable requests for information; and

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

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

RULE 1.5.

Fees and Division of Fees

(a) A lawyer shall not make an agreement for, charge, or collect an excessive or illegal fee or expense. A fee is excessive when, after a review of the facts, a reasonable lawyer would be left with a definite and firm conviction that the fee is excessive. The factors to be considered in determining whether a fee is excessive may 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 or made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

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

(4) the amount involved and the results obtained;

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

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

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

(8) whether the fee is fixed or contingent.

(b) A lawyer shall communicate to a client the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible. This information shall be communicated to the client before or within a reasonable time after commencement of the representation and shall be in writing where required by statute or court rule. This provision shall not apply when the lawyer will charge a regularly represented client on the same basis or rate and perform services that are of the same general kind as previously rendered to and paid for by the client. Any changes in the scope of the representation or the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. Promptly after a lawyer has been employed in a contingent fee matter, the lawyer shall provide the client with a writing stating the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or, if not prohibited by statute or court rule, after the contingent fee is calculated. The writing must clearly notify the client of any expenses for which the client will be liable regardless of whether the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a writing stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

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

(1) a contingent fee for representing a defendant in a criminal matter;

(2) a fee prohibited by law or rule of court;

(3) fee based on fraudulent billing;

(4) a nonrefundable retainer fee; provided that a lawyer may enter into a retainer agreement with a client containing a reasonable minimum fee clause if it defines in plain language and sets forth the circumstances under which such fee may be incurred and how it will be calculated; or

(5) any fee in a domestic relations matter if:

(i) the payment or amount of the fee is contingent upon the securing of a divorce or of obtaining child custody or visitation or is in any way determined by reference to the amount of maintenance, support, equitable distribution, or property settlement;

(ii) a written retainer agreement has not been signed by the lawyer and client setting forth in plain language the nature of the relationship and the details of the fee arrangement; or

(iii) the written retainer agreement includes a security interest, confession of judgment or other lien without prior notice being provided to the client in a signed retainer agreement and approval from a tribunal after notice to the adversary. A lawyer shall not foreclose on a mortgage placed on the marital residence while the spouse who consents to the mortgage remains the titleholder and the residence remains the spouse's primary residence.

(e) In domestic relations matters, a lawyer shall provide a prospective client with a statement of client's rights and responsibilities at the initial conference and prior to the signing of a written retainer agreement.

(f) Where applicable, a lawyer shall resolve fee disputes by arbitration at the election of the client pursuant to a fee arbitration program established by the Chief Administrator of the Courts and approved by the Administrative Board of the Courts.

(g) A lawyer shall not divide a fee for legal services with another lawyer who is not associated in the same law firm unless:

(1) the division is in proportion to the services performed by each lawyer or, by a writing given to the client, each lawyer assumes joint responsibility for the representation;

(2) the client agrees to employment of the other lawyer after a full disclosure that a division of fees will be made, including the share each lawyer will receive, and the client's agreement is confirmed in writing; and

(3) the total fee is not excessive.

(h) Rule 1.5(g) does not prohibit payment to a lawyer formerly associated in a law firm pursuant to a separation or retirement agreement.

RULE 1.6.

Confidentiality of Information

(a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, unless:

(1) the client gives informed consent, as defined in Rule 1.0(j);

(2) the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community; or

(3) the disclosure is permitted by paragraph (b).

"Confidential information" consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential. "Confidential information" does not ordinarily include (i) a lawyer's legal knowledge or legal research or (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates.

(b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:

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

(2) to prevent the client from committing a crime;

(3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by the lawyer still to be relied upon by a third person, where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud;

(4) to secure legal advice about compliance with these Rules or other law by the lawyer, another lawyer associated with the lawyer's firm or the law firm;

(5) (i) to defend the lawyer or the lawyer's employees and associates against an accusation of wrongful conduct; or

(ii) to establish or collect a fee; or

(6) when permitted or required under these Rules or to comply with other law or court order.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to, information protected by Rules 1.6, 1.9(c), or 1.18(b).

RULE 1.7.

Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:

(1) the representation will involve the lawyer in representing differing interests; or

(2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.

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

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

(2) the representation is not prohibited by law;

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

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

RULE 1.8.

Current Clients: Specific Conflict of Interest Rules

(a) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless:

(1) the transaction is fair and reasonable to the client and the terms of the transaction are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

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

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

whether the lawyer is representing the client in the transaction.

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

(c) A lawyer shall not:

(1) solicit any gift from a client, including a testamentary gift, for the benefit of the lawyer or a person related to the lawyer; or

(2) prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any gift, unless the lawyer or other recipient of the gift is related to the client and a reasonable lawyer would conclude that the transaction is fair and reasonable.

For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to conclusion of all aspects of the matter giving rise to the representation or proposed representation of the client or prospective client, a lawyer shall not negotiate or enter into any arrangement or understanding with:

(1) a client or a prospective client by which the lawyer acquires an interest in literary or media rights with respect to the subject matter of the representation or proposed representation; or

(2) any person by which the lawyer transfers or assigns any interest in literary or media rights with respect to the subject matter of the representation of a client or prospective client.

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

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

(2) a lawyer representing an indigent or pro bono client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer, in an action in which an attorney's fee is payable in whole or in part as a percentage of the recovery in the action, may pay on the lawyer's own account court costs and expenses of litigation. In such case, the fee paid to the lawyer from the proceeds of the action may include an amount equal to such costs and expenses incurred.

(f) A lawyer shall not accept compensation for representing a client, or anything of value related to the lawyer's representation of the client, from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independent professional judgment or with the client-lawyer relationship; and

(3) the client's confidential information is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, absent court approval, unless each client gives informed consent in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice; or

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

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

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

(2) contract with a client for a reasonable contingent fee in a civil matter subject to Rule 1.5(d) or other law or court rule.

(j) *(1)* A lawyer shall not:

(i) as a condition of entering into or continuing any professional representation by the lawyer or the lawyer's firm, require or demand sexual relations with any person;

(ii) employ coercion, intimidation or undue influence in entering into sexual relations incident to any professional representation by the lawyer or the lawyer's firm; or

(iii) in domestic relations matters, enter into sexual relations with a client during the course of the lawyer's representation of the client.

(2) Rule 1.8(j)(1) shall not apply to sexual relations between lawyers and their spouses or to ongoing consensual sexual relationships that predate the initiation of the client-lawyer relationship.

(k) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this Rule solely because of the occurrence of such sexual relations.

RULE 1.9.

Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in

which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

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

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

(2) about whom the lawyer had acquired information protected by Rules 1.6 or paragraph (c) of this Rule that is material to the matter.

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

(1) use confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client, except as these Rules would permit or require with respect to a current client or when the information has become generally known; or

(2) reveal confidential information of the former client protected by Rule 1.6 except as these Rules would permit or require with respect to a current client.

RULE 1.10.

Imputation of Conflicts of Interest

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8 or 1.9, except as otherwise provided therein.

(b) When a lawyer has terminated an association with a firm, the firm is prohibited from thereafter representing a person with interests that the firm knows or reasonably should know are materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm if the firm or any lawyer remaining in the firm has information protected by Rule 1.6 or Rule 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, the firm may not knowingly represent a client in a matter that is the same as or substantially related to a matter in which the newly associated lawyer, or a firm with which that lawyer was associated, formerly represented a client whose interests are materially adverse to the prospective or current client unless the newly associated lawyer did not acquire any information protected by Rule 1.6 or Rule 1.9(c) that is material to the current matter.

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

(e) A law firm shall make a written record of its engagements, at or near the time of each new engagement, and shall implement and maintain a system by which proposed engagements are checked against current and previous engagements when:

(1) the firm agrees to represent a new client;

(2) the firm agrees to represent an existing client in a new matter;

(3) the firm hires or associates with another lawyer; or

(4) an additional party is named or appears in a pending matter.

(f) Substantial failure to keep records or to implement or maintain a conflict-checking system that complies with paragraph (e) shall be a violation thereof regardless of whether there is another violation of these Rules.

(g) Where a violation of paragraph (e) by a law firm is a substantial factor in causing a violation of paragraph (a) by a lawyer, the law firm, as well as the individual lawyer, shall be responsible for the violation of paragraph (a).

(h) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent in any matter a client whose interests differ from those of another party to the matter who the lawyer knows is represented by the other lawyer unless the client consents to the representation after full disclosure and the lawyer concludes that the lawyer can adequately represent the interests of the client.

the risk of revealing information relating to the representation to persons outside the organization. Such measures may include, among others:

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to an appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly in violation of law and is likely to result in a substantial injury to the organization, the lawyer may reveal confidential information only if permitted by Rule 1.6, and may resign in accordance with Rule 1.16.

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

RULE 1.14.

Client With Diminished Capacity

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

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

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

RULE 1.15.

Preserving Identity of Funds and Property of Others; Fiduciary Responsibility; Commingling and Misappropriation of Client Funds or Property; Maintenance of Bank Accounts; Record Keeping; Examination of Records

(a) Prohibition Against Commingling and Misappropriation of Client Funds or Property.

A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own.

(b) Separate Accounts.

(1) A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law shall maintain such funds in a banking institution within New York State that agrees to provide dishonored check reports in accordance with the provisions of 22 N.Y.C.R.R. Part 1300. "Banking institution" means a state or national bank, trust company, savings bank, savings and loan association or credit union. Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which the lawyer is a member, or in the name of the lawyer or firm of lawyers by whom the lawyer is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts that the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity; into such special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited; provided, however, that such funds may be maintained in a banking institution located outside New York State if such

RULE 6.1.

Voluntary Pro Bono Service

Lawyers are strongly encouraged to provide pro bono legal services to benefit poor persons.

(a) Every lawyer should aspire to:

(1) provide at least 50 hours of pro bono legal services each year to poor persons; and

(2) contribute financially to organizations that provide legal services to poor persons. Lawyers in private practice or employed by a for-profit entity should aspire to contribute annually in an amount at least equivalent to (i) the amount typically billed by the lawyer (or the firm with which the lawyer is associated) for one hour of time; or (ii) if the lawyer's work is performed on a contingency basis, the amount typically billed by lawyers in the community for one hour of time; or (iii) the amount typically paid by the organization employing the lawyer for one hour of the lawyer's time; or (iv) if the lawyer is underemployed, an amount not to exceed one-tenth of one percent of the lawyer's income.

(b) Pro bono legal services that meet this goal are:

(1) professional services rendered in civil matters, and in those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel;

(2) activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons; and

(3) professional services to charitable, religious, civic and educational organizations in matters designed predominantly to address the needs of poor persons.

(c) Appropriate organizations for financial contributions are:

(1) organizations primarily engaged in the provision of legal services to the poor; and

(2) organizations substantially engaged in the provision of legal services to the poor, provided that the donated funds are to be used for the provision of such legal services.

(d) This Rule is not intended to be enforced through the disciplinary process, and the failure to fulfill the aspirational goals contained herein should be without legal consequence.

RULE 6.2.

[Reserved]

RULE 6.3.

Membership in a Legal Services Organization

A lawyer may serve as a director, officer or member of a not-for-profit legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests that differ from those of a client of the lawyer or the lawyer's firm. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rules 1.7 through 1.13; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests differ from those of a client of the lawyer or the lawyer's firm.

RULE 6.4.

Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration, notwithstanding that the reform

may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer actively participates, the lawyer shall disclose that fact to the organization, but need not identify the client. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7.

RULE 6.5.

Participation in Limited Pro Bono Legal Service Programs

(a) A lawyer who, under the auspices of a program sponsored by a court, government agency, bar association or not-for-profit legal services organization, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) shall comply with Rules 1.7, 1.8 and 1.9, concerning restrictions on representations where there are or may be conflicts of interest as that term is defined in these Rules, only if the lawyer has actual knowledge at the time of commencement of representation that the representation of the client involves a conflict of interest; and

(2) shall comply with Rule 1.10 only if the lawyer has actual knowledge at the time of commencement of representation that another lawyer associated with the lawyer in a law firm is affected by Rules 1.7, 1.8 and 1.9.

(b) Except as provided in paragraph (a)(2), Rule 1.7 and Rule 1.9 are inapplicable to a representation governed by this Rule.

(c) Short-term limited legal services are services providing legal advice or representation free of charge as part of a program described in paragraph (a) with no expectation that the assistance will continue beyond what is necessary to complete an initial consultation, representation or court appearance.

(d) The lawyer providing short-term limited legal services must secure the client's informed consent to the limited scope of the representation, and such representation shall be subject to the provisions of Rule 1.6.

(e) This Rule shall not apply where the court before which the matter is pending determines that a conflict of interest exists or, if during the course of the representation, the lawyer providing the services becomes aware of the existence of a conflict of interest precluding continued representation.

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New York State Bar Association
Committee on Professional Ethics

Opinion 1012 (7/30/2014)

Topic: Conflicts arising from limited-services pro bono representation

Digest: A lawyer who represents a client in a limited pro bono legal services program owes a continuing duty of confidentiality to that client, and is precluded from later representing a materially adverse client in the same or a substantially related matter if the lawyer has actual knowledge of the unwaived conflict, but conflicts arising from participation in such a program are not imputed to others in the lawyer's firm.

Rules: 1.6, 1.7, 1.9, 1.10, 5.1, 6.5

FACTS

1. The inquirer is the managing attorney of a county bar association legal services project. The bar association sponsors a legal services corporation that runs a limited pro bono legal services program (the "Program"). A lawyer who volunteers in such a program (a "Participating Lawyer") renders advice to individual clients (the "Program Clients") in a clinic setting on subjects such as landlord/tenant, domestic violence, family court and pro se federal court matters. The services are completed in one evening and often involve referral to another agency to assist the Program Client. After that evening, the Participating Lawyer does not provide any additional services to, or have any continuing relationship with, the Program Client.

2. Participating Lawyers typically volunteer their services three to four times per year. The Program advises the Program Clients that the services are limited to addressing one problem and that the lawyer rendering the limited service will not provide any further services to the client. The rights and responsibilities of the Program and the Program Client, including the limited nature of the representation, are set forth in a written agreement signed by the Program and the Program Client, and the Program retains that written agreement.

QUESTIONS

3. If a lawyer has represented a client in a limited pro bono legal services program, may that same lawyer later represent another client with interests materially adverse to the Program Client in the same or a substantially related matter?

4. If a lawyer in a firm has represented a client in a limited pro bono legal services program, may another lawyer associated in the same firm represent a client with interests materially adverse to the Program Client in the same or a substantially related matter?

OPINION

5. The inquiry is governed by Rule 6.5 of the New York Rules of Professional Conduct (the "Rules"). That rule's precursor, ABA Model Rule 6.5, was adopted in 2002 based on a proposal by the ABA Ethics 2000 Commission. The ABA proposal addressed conflict-checking requirements in the context of providing short-term limited representation under the auspices of a volunteer legal services project operated by a local bar association. The concern underlying the ABA rule was that "strict application of the conflict-of-interest rules may be deterring lawyers from serving as volunteers in programs in which clients are provided short-term limited legal services." Report of the ABA Ethics 2000 Commission, quoted in *Simon's New York Rules of Professional Conduct Annotated* 1314 (2013 ed.). In New York, prior to the adoption of Rule 6.5 in 2007, Rule 1.10(e) required a lawyer advising a client in a limited-services program to do a firm-wide conflicts check even though such programs "are normally operated under circumstances in which it is not feasible for a lawyer to utilize the conflict-checking system required by Rule 1.10(e)" before providing the limited kinds of services that such programs provide. Rule 6.5, Cmt. [1].

6. New York adopted a version of Rule 6.5 in 2007, using language slightly different from the ABA Model Rule. The current New York Rule 6.5 applies to a lawyer who provides short-term limited legal services under the auspices of a program sponsored by a bar association or certain other kinds of entities.[1]

7. Rule 6.5 provides in part that such a lawyer is required to comply with certain conflicts rules – namely, Rules 1.7, 1.8 and 1.9 – "only if the lawyer has *actual knowledge* at the time of commencement of representation that the representation of the client involves a conflict of interest." Rule 6.5(a)(1) (emphasis added). It also provides that the lawyer is required to comply with the imputation provisions in Rule 1.10 "only if the lawyer has *actual knowledge* at the time of commencement of representation that another lawyer associated with the lawyer in a law firm is affected by Rules 1.7, 1.8 and 1.9." Rule 6.5(a)(2) (emphasis added). However, Rule 6.5 ceases to apply "if during the course of the representation, the lawyer providing the services becomes aware of the existence of a conflict of interest precluding continued representation." Rule 6.5(e).

8. Rule 6.5 is written from the perspective of the individual Participating Lawyer and addresses what the lawyer must consider when undertaking a limited-services assignment. It makes the usual conflicts rules inapplicable unless the Participating Lawyer has "actual knowledge" that the representation of the client involves a conflict of interest.[2] In the absence of

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[1] "Short-term limited legal services" is defined to mean "services providing legal advice or representation free of charge as part of a program described in [Rule 6.5(a)] with no expectation that the assistance will continue beyond what is necessary to complete an initial consultation, representation or court appearance." Rule 6.5(c).

[2] For example, if, at the outset of the consultation, the lawyer actually knows that the short-term representation would conflict with a current client under Rule 1.7 or with a former client under Rule 1.9, then the lawyer generally may not provide the short-term limited legal services. Likewise, if the lawyer obtains such actual knowledge during the course of the consultation, then the lawyer may not continue to provide the services.

such actual knowledge, the lawyer does not need to make any further conflicts inquiry and may provide the short-term services.

9. The reason for relaxing the conflicts rules in this context is that "a lawyer who is representing a client in the circumstances addressed by [Rule 6.5] ordinarily is not able to check systematically for conflicts of interest." Rule 6.5, Cmt. [3]; *see* Rule 6.5, Cmt. [1], quoted in paragraph 5 *supra*. Thus the clear implication of Rule 6.5 is that a Participating Lawyer may undertake a limited-services representation without first consulting the conflict-checking system required by Rule 1.10(e). Moreover, while Rule 6.5 does not explicitly address what is required by Rule 1.10(e), we think it is within the fair import of the approach taken in Rule 6.5 that a limited-services representation does not require the Participating Lawyer or that lawyer's firm to enter the limited-services relationship into the firm's conflict-checking system.

A. <u>Do the Usual Conflict Rules Apply to a Participating Lawyer?</u>

10. The first question is whether the relaxed conflicts rules that apply to the Participating Lawyer *during* the provision of the short-term limited legal services also apply if a conflict between a Program Client and another client or prospective client arises (or is discovered) *after* the short-term representation has ended. Suppose, for example, that after the Participating Lawyer has finished rendering services in a certain matter to a short-term Program Client, a prospective client seeks to retain the Participating Lawyer in the same or a substantially similar matter, and the prospective client's interests in the matter are materially adverse to those of the Program Client. Does Rule 6.5 continue to apply? If not, then the lawyer would be subject to the more exacting conflict provisions that ordinarily apply.[3]

11. We believe that Rule 6.5 continues to relax the conflict rules in this situation until there is actual knowledge of a conflict. Our conclusion is based on the Rule's broad language, its policy of facilitating participation in limited legal services programs, and the lack of any provision explicitly terminating its application at the conclusion of the short-term representation. *See* Rule 6.5(b) (providing that except when conflict is imputed based on actual knowledge, Rules 1.7 and 1.9 "are inapplicable to a representation governed by this Rule").

12. Thus, when a prospective client seeks to retain the Participating Lawyer, and unknown to the Participating Lawyer there is a potential conflict arising from the lawyer's participation in the Program, the Participating Lawyer remains subject only to the relaxed conflict provisions of Rule 6.5(a)-(b). In other words, if the Participating Lawyer does not have "actual knowledge" of a conflict with the Program Client, then the Participating Lawyer may undertake the new representation.[4]

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[3] If Rule 6.5 did not apply, the lawyer would be subject to the provisions in Rule 1.9 that govern conflicts relating to former clients. *See* Rule 6.5, Cmt. [1] (noting that in advice-only clinics and pro se counseling programs, "a client-lawyer relationship is established"); Rule 6.5, Cmt. [2] (stating that except as provided in Rule 6.5, the limited representation is subject to all the Rules, and citing as an example Rule 1.9(c), which applies to former clients). *But see Simon's New York Rules of Professional Conduct Annotated* 1321 (2013 ed.) (arguing that limited-service clients should enjoy only the protections accorded prospective clients under Rule 1.18 rather than the broader protections accorded former clients under Rule 1.9).

[4] Of course it would still be necessary to consult the firm conflict-checking system to check for possible conflicts with current firm clients, and with former clients other than Program Clients. Rule 6.5 relaxes

13. However, if at any time the Participating Lawyer comes to have actual knowledge that the prospective client is seeking representation in a matter that is the same as or substantially related to a matter on which the Participating Lawyer represented a Program Client, and that the interests of the two are materially adverse, then the relaxed conflict provisions of Rule 6.5(a)-(b) cease to apply. *See* Rule 6.5(e). At that point, the regular conflicts rules apply as usual, and the Participating Lawyer may not represent the prospective client absent the former Program Client's informed consent confirmed in writing. *See* Rule 1.9(a).

B. <u>Are the Participating Lawyer's Conflicts Imputed to the Firm?</u>

14. In the second question, the inquirer asks whether Rule 1.10(a), which imputes a lawyer's conflicts under certain rules to others associated in the same firm, would prohibit another member of the Participating Lawyer's firm from representing a client who has interests materially adverse to the Program Client in the same or a substantially similar matter.

15. In analyzing this question, we are again guided by the Rule's broad language and its policy of facilitating participation in short-term legal services programs. For such programs, Rule 6.5 not only limits the application of underlying conflict provisions such as Rules 1.7 and 1.9, but also – at least as to a Participating Lawyer – limits the application of the imputation provisions of Rule 1.10. *See* Rule 6.5(a)(2). We believe that just as applying a rigid imputation rule to a Participating Lawyer could unduly burden a firm's participation in such programs, so could undue burdens result from applying a rigid imputation rule to other lawyers in the Participating Lawyer's firm. And the rules do not by their terms explicitly mandate such imputation to other lawyers in the firm.[5]

16. Thus, if a new client seeks to retain the Participating Lawyer's firm in a matter that is the same as or substantially related to a matter on which the Participating Lawyer represented a Program Client, and there is known material adversity between the interests of the two, then Rule 1.10(a) will not preclude other members of the firm from representing the new client, even though Rule 1.9(a) will preclude the Participating Lawyer from doing so absent proper waiver.[6] The same reasoning applies if the firm discovers that it is *already* representing a client in a

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the requirement of using a conflict-checking system only with respect to short-term clients under that Rule; with respect to other former clients and current ones, Rules 1.7, 1.9 and 1.10(e) apply as usual.

[5] So long as a possible conflict remains governed by Rule 6.5 – which means that the application of that Rule has not been negated by actual knowledge under Rule 6.5(a) and (e) – then the possible conflict is not governed by Rule 1.7 or 1.9, and the literal terms of Rule 1.10(a) therefore do not impute any conflict. Rule 6.5 ceases to apply when the Participating Lawyer comes to have actual knowledge of a conflict, but the Rules do not explicitly provide in that case that Rule 1.10 springs back to apply to other lawyers in the firm. *Cf.* Rule 6.5(a)(2) (providing that in case of actual knowledge *the Participating Lawyer* shall comply with Rule 1.10); Rule 6.5, Cmt. [5] (Rule 1.10 does "become applicable" if the Participating Lawyer later undertakes to represent the Program Client "on an ongoing basis," meaning beyond the confines of the short-term program).

[6] We have addressed only the situation in which the conflict is known to the firm. It is also possible, especially since conflict-checking systems are not required to include short-term clients, see paragraph 9 *supra*, that the firm would not discover the conflict. But in that case there would be no argument for imputation. *See* Rule 1.10(a) (providing that lawyers shall not "knowingly" represent a client whom an associated lawyer could not represent due to certain kinds of conflicts).

matter that is the same as or substantially related to a matter on which the Participating Lawyer represented a Program Client, and that there is material adversity between the interests of the two. In that case too, the Participating Lawyer's conflict would not be imputed to other members of the firm, and those other members could continue the representation.[7]

17. Nothing about the limited nature of the Program modifies the Participating Lawyer's duties of confidentiality to the Program Client.[8] Thus, even when the Participating Lawyer or another lawyer in the firm may and does represent another client with materially adverse interests in a substantially related matter, the Participating Lawyer may not reveal confidential information of the former Program Client, or use confidential information of the former Program Client to that former client's disadvantage, except as permitted by Rule 1.9(c).

18. The ethical obligations arising from participating in the Program extend beyond the Participating Lawyer. All lawyers with management responsibility in the firm, and the firm itself, are required to make reasonable efforts to ensure that the lawyers in the firm conform to ethical obligations. *See* Rule 5.1(a), (b). Here, those obligations include (i) the Participating Lawyer's duty of confidentiality to the Program Client and (ii) the Participating Lawyer's duty to refrain from representing a client materially adverse to the Program Client when the Participating Lawyer actually knows of a conflict prohibiting such representation.

CONCLUSION

19. A lawyer who has represented a client in a limited pro bono legal services program is prohibited from subsequently representing a materially adverse client in the same or a substantially related matter only if the lawyer has actual knowledge of the conflict. Even if the lawyer has actual knowledge of such a conflict, however, the conflict is not imputed to others in the lawyer's firm. Whether or not anyone in the firm represents a client adverse to the limited-services client, the lawyer who represented the limited-services client remains bound by confidentiality obligations to that client.

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[7] Of course Rule 6.5 affects only those conflicts that could arise as a result of a lawyer's participation in a short-term limited legal services program. If other lawyers in the firm have any direct or imputed conflicts arising from any other source, then Rule 6.5 would not alter their obligation to follow the normal rules governing conflicts of interest.

[8] Confidentiality duties are defined by Rule 1.6 during the short time of the representation in the Program, and thereafter are defined by Rule 1.9(c). *See* Rule 6.5(d) (short-term limited legal services representation "shall be subject to the provisions of Rule 1.6"); Rule 6.5, Cmt. [2] (except as provided in Rule 6.5, all rules of legal ethics, "including Rule[ ] 1.6 and Rule 1.9(c), are applicable to the limited representation"). We decline to follow the alternative suggestion, see note 3 *supra*, that confidentiality duties should be only those that apply to prospective clients under Rule 1.18.