C8-84-1650

No. ___-03-___

STATE OF MINNESOTA
IN SUPREME COURT

OFFICE APPELLATE COURTS

FEB 19 2003

FILED

In re:

Proposed Amendment of Minnesota Rules of Professional Conduct

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PETITION OF MINNESOTA STATE BAR ASSOCIATION

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No. ___-03-___

STATE OF MINNESOTA
IN SUPREME COURT

In re:

Proposed Amendment of Minnesota Rules
of Professional Conduct

PETITION OF MINNESOTA STATE BAR ASSOCIATION

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Minnesota State Bar Association ("MSBA") respectfully submits this petition asking this Honorable Court to amend Minnesota Rule of Professional Conduct 1.10 ("Rule 1.10") to permit and promote short-term legal assistance to litigants otherwise proceeding *pro se*. In support of this petition, the MSBA would show the following:

1. Petitioner MSBA is a not-for-profit corporation of attorneys admitted to practice law before this Court and the lower courts throughout the State of Minnesota.

2. This Honorable Court has and exercises the exclusive and inherent power to regulate the legal profession in the interest of the public good and the efficient administration of justice. The Minnesota legislature has expressly recognized this power. See Minn. Stat. §480.05 (2002). In the exercise of that power, this Honorable Court has propounded the Minnesota Rules of Professional Conduct ("MPRC"), mandatory ethical standards governing attorney conduct that include, among other things, the imputation

among attorneys in the same firm of disqualification based on conflict of interest. See Rule 1.10.

3. For many years, the MSBA has been concerned about and has addressed various issues concerning public access to the courts and to the legal and procedural information necessary to make effective use of the courts. Since 1996, the MSBA has had an active Committee on *Pro Se* Implementation, which has worked to identify and overcome barriers to effective *pro se* participation in the judicial process.

4. The Judiciary Subcommittee of the MSBA's *Pro Se* Implementation Committee has studied various issues concerning rules and court procedures affecting the participation of *pro se* litigants in the legal system. The Judiciary Subcommittee reported its findings to the *Pro Se* Implementation Committee, and, on June 12, 2002, the *Pro Se* Implementation Committee issued its report and recommendations to the MSBA, a copy of which is included as Section 1 of the Appendix to this Petition. The General Assembly of the MSBA adopted those recommendations at the annual meeting of the MSBA in Duluth in July 2002. The MSBA also authorized the present petition at that time. This petition addresses only recommendation no. 4 of the *Pro Se* Implementation Committee report.[1]

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[1] Of the Report's other recommendations, recommendation no. 1 does not require any rule change and recommendations nos. 2 and 3 involve proposed amendments to the general rules of practice for district courts and to the Minnesota rules of family court procedure respectively. For the reasons discussed in the text, the MSBA concluded that

(continued on next page)

5. Working with courts, county bar associations, and law firms, the MSBA, its committees, and its members have encouraged and aided in the establishment of various volunteer and *pro bono publico* programs to provide short-term legal assistance to people who would otherwise have to navigate the legal system unaided. At present, Hennepin, Ramsey and Dakota Counties have established programs of this type, staffed by volunteer attorneys from the respective counties. At least 150 attorneys donate their time and expertise to support these efforts in these three counties.

6. The proposed rule change would promote efficient delivery of short-term legal services to *pro se* litigants and encourage attorneys to provide such services through an amendment of MPRC Rule 1.10. In its present form, Rule 1.10 imputes the disqualification of an attorney (under several of the MRPC's conflict of interest provisions) to all members of that attorney's firm. Thus, if one lawyer in a firm is disqualified because of a conflict of interest from entering into an attorney-client relationship with a particular person, neither may any other lawyer at that lawyer's firm enter into such a relationship with that person.

7. This strict provision poses problems in the delivery of short-term legal services. Despite the brevity of the contact, a volunteer lawyer participating in such a *pro bono* program and the person consulting that attorney likely form an attorney-client

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the discrete issues presented by recommendation no. 4 were of particular urgency, prompting the present petition.

relationship, bringing into play the attorney-client provisions of the MRPC, including Rule 1.10.

8. The application of Rule 1.10 in such circumstances presents two problems for lawyers wishing to volunteer to provide *pro bono* short-term legal services. First, a volunteer lawyer, according to the letter of the rules, must check each potential short-term client against his or her law firm's list of adverse parties <u>and</u> must check each party potentially adverse to the potential short-term client against the firm's list of clients to identify possible conflicts of interest. Such immediate checks of conflict information are difficult at best and often impossible as a practical matter, given the limited time that both the attorney and the client may have available for the consultation. Moreover, these short-term consultations often occur at courthouses or other public buildings, remote from the resources of the lawyer's office. The inconvenience and the dilemma presented by this situation tend to discourage lawyer participation in the volunteer program.

9. Second, the current imputation rule forces volunteer lawyers to put at risk potential compensated legal services, not just for themselves (which is both expected and necessary in the volunteer program) but for all the other attorneys in their respective firms as well. Under the present rules, a volunteer lawyer who provides 15 minutes of legal advice to a potential plaintiff concerning how to start a suit against a defendant risks disqualifying his or her entire firm from representation of the defendant in that action, even if (perhaps unknown to the lawyer) the defendant is a long-term client of the lawyer's firm. Some *pro bono* programs have tried to address this problem by having

short-term clients sign waivers acknowledging that the volunteer attorney's firm may in the future represent the opposing party. See Hennepin County Legal Access Point intake form, attached as Section 2 of the Appendix to this Petition. The effectiveness of such waivers is untested, however, and they cannot of course circumvent the imputation of a conflict under the mandatory language in MPRC 1.7 concerning representation that may "adversely affect" or "materially limit[]" other representation. Again, this risk tends to discourage attorney participation in these volunteer programs.

10. These concerns affect volunteer attorneys from firms both large and small, and from all parts of the state. Larger firms in urban areas have current clients numbering in the hundreds or thousands, and no single attorney knows or could be expected to know all the firm's clients or anticipate future possible representations in areas remote from the attorney's own practice. In rural areas, where the number of attorneys available to staff such *pro bono* programs is substantially smaller, imputed conflicts with law firms become of necessity more likely, and strict enforcement of the present imputation rules may leave some *pro se* litigants without an attorney to consult.

11. The disincentives discussed above are having significant and on-going effects on lawyer participation in volunteer programs. Within the last year, MSBA members have tried to establish a legal "access point" to assist *pro se* litigants in Dakota County, which received a very favorable initial reaction from Dakota County lawyers. Since the program has been up and running, however, it has had difficulty attracting and recruiting additional attorney volunteers. In declining, lawyers have repeatedly cited the

two conflict-related concerns described above: the risk of unknowing conflict violations and the threat to potential remunerative work. As a result, Dakota County's program has been unable to provide the level of service to *pro se* litigants that its sponsors would have liked. These concerns have also been raised by lawyers participating in the Hennepin and Ramsey County programs, and the MSBA believes these concerns have and will significantly lessen lawyer participation in these and other similar programs that courts and counties may seek to establish in the future. The problem is immediate and urgent, and is every week impeding the efforts of courts and the MSBA to provide such programs and to encourage lawyer participation in them.

12. To address these concerns, the MSBA proposes that this Honorable Court amend Rule 1.10 to implement the relief requested in this Petition, as indicated in the following redlined text:

> RULE 1.10 IMPUTED DISQUALIFICATION: GENERAL RULE
> (a) Except as provided in this rule, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.
> (b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) unless there is no reasonably apparent risk that confidential information of the previously represented client will be used with material adverse effect on that client because:

(1) any confidential information communicated to the lawyer is unlikely to be significant in the subsequent matter;

(2) the lawyer is subject to screening measures adequate to prevent disclosure of the confidential information and to prevent involvement by that lawyer in the representation; and

(3) timely and adequate notice of the screening has been provided to all affected clients.

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

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

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

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

(d) Disqualifications prescribed by this rule are subject to the following exceptions: (1) they may be waived by the affected client under the conditions stated in Rule 1.7; (2) they do not apply to a lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter, unless the lawyer knows that the lawyer or another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9 (a) with respect to the matter

13. In conjunction with such an amendment, the MSBA requests that this Honorable Court add the following new comment at the conclusion of the present comments to Rule 1.10:

Short-term Representation Exception

Legal services organizations, courts and various nonprofit organizations have established programs through which

> lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In such programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. For that reason, compliance with Rules 1.7, 1.9(a) or 1.10(a) is required only if the lawyer knows that the representation presents a conflict of interest for the lawyer or another lawyer in the firms is disqualified by Rules 1.7 or 1.9(a) in the matter.
>
> A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2 (b). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the rules of Professional Conduct, including Rules 1.6 and 1.9(b) are applicable to the limited representation.
>
> If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 (a)-(d) becomes applicable.

A full version of the proposed amended Rule 1.10 is set forth in the Addendum to this Petition.

14. The MSBA believes that adoption of this amendment will substantially improve the availability of short-term legal assistance to otherwise *pro se* litigants in Minnesota. The public service legal assistance programs described above necessarily depend on the *pro bono* commitment and on generosity of the volunteer lawyers. The proposed amendment would encourage greater attorney participation in these programs

by ameliorating the inconvenience of detailed conflict checks for short-term clients and by eliminating the risk of "conflicting out" a lawyer's entire firm from future representations related to the short-term relationships.

15. Greater attorney participation in such *pro bono* programs will in turn provide substantial benefits to the increasing number of litigants who seek or are forced to use the legal system without the benefit of long-term legal representation. *Pro se* litigants are more likely to act appropriately in court if an attorney can advise them, albeit briefly, about the court's procedures and pitfalls. Moreover, *pro se* litigants who understand how the legal system works are more likely to have confidence in that system and to respect the outcome of the process.

16. The increased availability of short-term legal assistance by volunteer attorneys will also benefit the judicial system itself. The increased number of *pro se* litigants appearing before Minnesota's courts over the past few years has placed burdens both on judges and on court personnel. Short-term legal assistance programs can help alleviate that burden. Better-informed *pro se* litigants are more likely to present their cases appropriately and effectively in court, and are less likely to disrupt judicial proceedings either through simple lack of knowledge or through resentment over misunderstood or overlooked court rules.

17. The MSBA's proposed amendment to Rule 1.10 is not intended to effect any change in any other provisions of the MPRC. The new exception in the proposed

Rule 1.10(d) would apply only to *pro bono* services provided through a program sponsored by a court or a nonprofit organization; no door is opened for "conflict-free" paid consultations. Lawyers providing short-term legal assistance would still be required to make clear to the client the limited scope of the attorney-client relationship. See MPRC 1.2(b). The communications between the attorney and the short-term client would still be confidential, even if the attorney's firm were to represent an adverse party in the same matter. See MPRC 1.6. Finally, if a lawyer has a *personal* conflict of interest under one or more of MPRC 1.7, 1.8(c), 1.9, or 2.2, those rules and their requirements would still apply to that lawyer's *individual* relationship with the prospective short-term client. (For example, if a prospective short-term client sought advice from a lawyer about how to sue a defendant that the lawyer personally represents in other matters, that attorney would still have to comply with the provisions of Rule 1.7 concerning representation of a client adverse to another client, notwithstanding the proposed amendment.)

18. The issue of imputed disqualification in the short-term, *pro bono* context has attracted attention elsewhere. The American Bar Association's Ethics 2000 modifications to the Model Rules of Professional Conduct proposed a separate rule to address the issue:

> Rule 6.5 Nonprofit and Court-Annexed Limited Legal Services
>
> (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides

> short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
>
> (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
>
> (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.
>
> (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

See http://www.abanet.org/cpr/mrpc/rule_6_5.html; http://www.abanet.org/cpr/mrpc/rule_6_5_comm.html; see also William Hornsby, Defining the Role of Lawyers in Pro Se Litigation, The Judges' Journal, Fall 2002 at 5, 9-10 (discussing new ABA rules). The text of the ABA's Model Rule 6.5 and the full set of comments that accompany it are set forth in Section 3 of the Appendix to this Petition.

19. In addition, the state of Maine has recently added a provision to the Maine Bar Rules to address similar concerns. Maine Bar Rule 3.4(j)(2001)[2] provides:

> **(j) Non-Profit and Court-Annexed Limited Legal Service Programs**. A lawyer who, under the auspices of a non-profit organization or a court-annexed program, provides limited representation to a client without expectation of either the lawyer or the client that the lawyer will provide continuing representation in the matter is subject to the requirements of Rules 3.4(a)-(e) [concerning disclosure and conflicts of interest] only if the lawyer knows that the representation of the client involves a conflict of interest.

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[2] Maine's Code of Professional Responsibility is structured differently from Minnesota's Rules, and combines all its conflict-of-interest rules into a single, lengthy Rule 3.4. See http://www.mebaroverseers.org/PDF/Code%20of%20Professional%20Responsibility.pdf

The comments to the rule make clear that it is intended to address the very same issues identified by the MSBA's *Pro Se* Implementation Committee:

> A conflict of interest that would otherwise be imputed to a lawyer because of the lawyer association with a firm will not preclude the lawyer from representing a client in a limited services program. Nor will the lawyer participation in such a program preclude the lawyer's firm from undertaking or continuing the representation of clients with interests adverse to a client being represented under the program's auspices.

The full text of Maine Bar Rule 3.4 and its comments are set forth in Section 4 of the Appendix to this Petition.

20. As part of its deliberation on this issue, the MSBA has considered how the proposed changes in the imputation rule would best be incorporated in the MPRC. The MSBA recognizes that Minnesota's rules generally track the ABA Model Rules, and that (as noted above) the Model Rules propose a separate rule 6.5 under the heading "Public Service" to address the issue of short-term legal relationships. In the MSBA's review, however, the creation of a new rule under the "Public Service" would not place the provision where most attorneys would most immediately think to look for it, and would remove the relevant language too far from the rules to which it makes exception. The MSBA therefore recommends that the proposed changes be adopted through amendment to Rule 1.10, the rule to which the proposed exceptions directly apply.

21. The MSBA respectfully submits that the proposed amendment to Rule 1.10 will constitute a significant advance in the administration of the legal system and in the delivery of legal services to all those with legal needs. It will further the Court's mission,

consistent with the Minnesota Constitution, of giving all persons in Minnesota meaningful access to justice, and will encourage attorneys to provide legal services to those who would otherwise go without them. Because of the urgency of the need and the immediate encouragement the change would provide, MSBA urges this Honorable Court's prompt consideration of this Petition.

22. Contemporaneous with this filing, a copy of this Petition has been submitted for the purpose of information to the Honorable Edward Toussaint, Chief Judge, Minnesota Court of Appeals, and to Mr. Kenneth Jorgenson, Director, Lawyers Professional Responsibility Board.

Accordingly, Petitioner Minnesota State Bar Association respectfully requests this Honorable Court to amend Minnesota Rule of Professional Conduct 1.10 and its comments as set forth in paragraphs 12 and 13 above.

Dated: February 18, 2003

Respectfully submitted,
MINNESOTA STATE BAR ASSOCIATION

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ADDENDUM TO MSBA PETITION

Proposed Amended Minnesota Rule of Professional Conduct 1.10 and comments

RULE 1.10 IMPUTED DISQUALIFICATION: GENERAL RULE

(a) Except as provided in this rule, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.
(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) unless there is no reasonably apparent risk that confidential information of the previously represented client will be used with material adverse effect on that client because:

(1) any confidential information communicated to the lawyer is unlikely to be significant in the subsequent matter;
(2) the lawyer is subject to screening measures adequate to prevent disclosure of the confidential information and to prevent involvement by that lawyer in the representation; and
(3) timely and adequate notice of the screening has been provided to all affected clients.

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

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

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

(d) ~~A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.~~
Disqualifications prescribed by this rule are subject to the following exceptions: (1) they may be waived by the affected client under the conditions stated in Rule 1.7; (2) they do not apply to a lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter, unless the lawyer knows that the lawyer or another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9 (a) with respect to the matter.

COMMENT

Definition of "Firm"
For purposes of the Rules of Professional Conduct, the term "firm" includes lawyers in a private firm, and lawyers employed in the legal department of a corporation or other organization, or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and

occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any former agreement between associated lawyers are relevant in determining whether they are a firm as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

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

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.

Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1). The individual lawyer involved is bound by the Rules generally, including Rules 1.6, 1.7, and 1.9.

Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences, and therefore to the protections provided in Rules 1.6, 1.9, and 1.11. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore the government is better served in the long run by the protections stated in Rule 1.11.

Principles of Imputed Disqualification

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

Lawyers Moving Between Firms

When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from reforming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety proscribed in Canon 9 of the ABA Model Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.

Confidentiality

Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other

clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. Application of paragraphs (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought. Paragraphs (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(b). Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.

Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. *See* Rules 1.6 and 1.9.

Adverse Positions

The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by Rule 1.9(a). Thus, if a lawyer left one firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interest in the same or related matters, so long as the conditions of Rule 1.10(b) and (c) concerning confidentiality have been met.

Short-term Representation Exception

Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In such programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. For that reason, compliance with Rules 1.7, 1.9(a) or 1.10(a) is required only if the lawyer knows that the representation presents a conflict of interest for the lawyer or another lawyer in the firms is disqualified by Rules 1.7 or 1.9(a) in the matter.

A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2 (b). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the rules of Professional Conduct, including Rules 1.6 and 1.9(b), are applicable to the limited representation.

If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 (a)-(d) become applicable.

No. ___-03-___

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STATE OF MINNESOTA
IN SUPREME COURT

APPENDIX TO MSBA PETITION

Section 1 Minnesota State Bar Association Pro Se Implementation Committee Recommendations and Report, June 12, 2002 (with Appendix D)..................................App.-1

Section 2 Legal Access Point Information Sheet/Client Form.....App.-10

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Minnesota State Bar Association
Pro Se Implementation Committee

Recommendations and Report
June 12, 2002

Introduction

The Pro Se Implementation Committee formed four subcommittees. This Report contains recommendations of the Judiciary Subcommittee. The Pro Se Implementation Committee anticipates submitting additional recommendations to the General Assembly in the future.

The Recommendations in this Report are intended to:

- enhance the ability of court personnel to effectively assist Self-Represented Litigants (Recommendations 1-2);
- simplify court procedures (Recommendation 3); and
- enhance the ability of attorneys to provide pro bono assistance on a limited advice basis (Recommendation 4).

Recommendation # 1

The subcommittee recommends that the Supreme Court Continuing Education Office develop a training program for judicial and non-judicial staff on best practices for cases involving pro se litigants, and that the program be mandatory, or strongly recommended. The subcommittee further recommends that the program address the legal and practical issues raised by the presence of self-represented parties, and provide a forum for sharing ideas and developing best practices.

Report

To promote effective courtroom practices, the Committee recommends that the Supreme Court initiate training for Judges and staff in best practices for cases involving pro se litigants. The presence of one or two pro se parties changes the expectations and needs of the courtroom participants. The Committee finds that the issues raised by the presence of pro se litigants in the courtroom have not been addressed in a systematic fashion in judicial training, and recommends education and a forum for sharing problems and solutions. Training programs in Wisconsin, Alaska and other locations should be reviewed and adapted for use in Minnesota. The Committee recognizes that education and training of judges, attorneys and court staff on best practices for dealing with pro se litigants may be as valuable as simplifying rules and procedures.

Recommendation #2

Amend the General Rules of Practice for the District Courts to authorize the establishment of facilitator programs in Minnesota courts. The Recommended Rule is attached as Appendix A.

Report

Florida, Oregon, California, Washington State and others have established family court facilitator programs. They have been authorized by statute (Oregon, California and Washington) and rule of civil procedure (Florida). These programs are supervised by the courts and have as their objective the provision of assistance in completing forms and providing information about court procedures. Minnesota has a family law facilitator program in the 4th Judicial District. This program has operated since 1998, without formal authorization by statute or court rule.

The Committee does not believe that adoption of a rule is required for operation of a court-based self help program. Furthermore, by recommending adoption of a Family Law Self Help Rule, the Committee does not intend to discourage courts from offering Self-Represented Litigants (SRLs) assistance with cases types other than family.

The adoption of a court rule serves three functions. First, it encourages courts to create programs by explicitly authorizing them. (Paragraph 1). Second, it imposes sound limitations on the programs and provides a framework for operation (Paragraphs 4-7). Third, it establishes protections for the lawyer and non-lawyer staff and volunteers of the program by addressing ethical and liability issues (Paragraphs 2, and 8-10).

Family Court has consistently been identified as the area of greatest need for SRL assistance and thus the Committee chose to start with a Rule addressing Family Court Programs.

This proposal was submitted for comment to the MSBA Family Law Section, chaired by Stephen Arnott, and the MSBA Court Rules and Administration Committee, co-chaired by Hon. Bruce Douglas and Mark Gardner. The Court Rules and Administration Committee formally endorsed the proposal. The Family Law Section has not taken formal action on the proposal.

Recommendation #3

That Minn. Rules of Family Court Procedure, Rule 302.01 be amended to permit use of a Combined Joint Petition, Agreement and Judgment and Decree for Dissolution of Marriage without Children. The recommended rule amendment and Comment to Rule is attached as Appendix B, and a proposed Joint Petition, Agreement and Judgment and Decree is attached to this Report as Appendix C.

Report

The Judiciary Subcommittee was charged in part with examining the desirability of creating simplified rules applicable only to pro se litigants. The subcommittee concluded that separate rules are not desirable because a two-tier system of justice could

result. Simplification of court rules and procedures can improve access to justice for low income litigants, and reduce costs for all litigants; therefore, simplification is recommended.

The committee recommends amending Minn.Rules of Family Court Procedure, Rule 302.01(b) to permit completion of a Marriage Dissolution Without Children upon the filing of the following documents only:

1. A combined Joint Petition, Agreement, and Judgment and Decree for Marriage Dissolution Without Children.
2. A Confidential Information Statement (Form 11).
3. A Notice to the Public Authority, if required.

A recommended form petition/agreement/decree is attached to the proposed rule. The Joint Petition, Agreement and Judgment and Decree form would be made available to the Judicial Districts and the public by State Court Administration, which also would amend and update the form as necessary. Compared to the forms now available from court administrators for pro se divorces, the proposed form reduces the paperwork substantially.

An amendment to Rule 302.01(b) is required to eliminate the need for filing a separate Findings of Fact, Conclusions of Law, Judgment and Decree (required by Rule 306.02 of the Rules of Family Court Procedure), and a separate Affidavit of Non-Military Status and Form 10 Default Scheduling Request (required by Rule 306.01of the Rules of Family Court Procedure), and a separate Certificate of Representation and Parties (required by Rule 104 of the General Rules of Practice). All of the information contained in these documents is included in the one form "Joint Petition, Agreement, and Judgment and Decree."

It is anticipated that the State Court Administrator will delegate responsibility for producing , revising and updating the form Joint Petition to the State Forms and Procedures Committee, which in turn presents its work product to the Conference of Chief Judges for approval. Comments and suggestions to revise forms are accepted and acted upon by the Forms and Procedures Committee upon receipt.

This proposal was submitted for comment to the MSBA Family Law Section, chaired by Stephen Arnott, and the MSBA Court Rules and Administration Committee, co-chaired by Hon. Bruce Douglas and Mark Gardner. The Court Rules and Administration Committee formally endorsed the proposal. The Family Law Section has not taken formal action on the proposal.

Recommendation #4

Amend Rule 1.10 of the Rules of Professional Conduct to relax conflict of interest prohibitions for attorneys participating in non-profit or court-annexed limited legal service programs to prohibit counseling of program clients only in circumstances where the attorney has actual knowledge of a conflict of interest. The proposed Rule amendment is attached as Appendix D.

Report

The MSBA Rules of Professional Conduct Committee, chaired by Frederick Finch, has endorsed Recommendation #4. ABA Ethics 2000 Model Rule 6.5 is the basis for the proposed Rule 1.10 Amendment. The Pro Se Committee believes that the proposed amendment to Rule 1.10 will have an immediate impact on SRL issues and that the rule should be brought to the Supreme Court as soon as possible.

Court-annexed legal advice programs and many such programs sponsored by non-profit organizations rely upon volunteer attorneys to provide limited scope legal assistance to SRLs. Volunteer attorneys may be unaware of conflicts and may be unable to access records to determine whether a conflict of interest exists because of the attorney's association with a firm. In order to encourage attorneys to participate in these programs and relieve concerns that an attorney's counseling of program clients may inadvertently constitute a conflict of interest, an amendment to the Rules of Professional Conduct is needed.

CONCLUSION

The recommendations of the Pro Se Committee attempt to address some of the challenges related to SRLs without encouraging or unnecessarily restricting those litigants who choose to represent themselves or who are unable to retain counsel. The recommendations recognize the need to provide resources and information for SRLs without creating special rules or procedures that benefit SRLs to the detriment of represented litigants. It is apparent that the number of SRLs is increasing. The Committee's recommendations are intended to increase the knowledge and competence of SRLs, to improve the experience of judges, attorneys, and court administrators who become involved with SRLs, and to enhance the quality of justice for all litigants.

Respectfully Submitted,

Pro Se Implementation Committee
Justice Edward Toussaint and
Eric Magnuson, Co-chairs

Appendix D

RULE 1.10 IMPUTED DISQUALIFICATION: GENERAL RULE

(a) Except as provided in this rule, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) unless there is no reasonably apparent risk that confidential information of the previously represented client will be used with material adverse effect on that client because:

(1) any confidential information communicated to the lawyer is unlikely to be significant in the subsequent matter;

(2) the lawyer is subject to screening measures adequate to prevent disclosure of the confidential information and to prevent involvement by that lawyer in the representation; and

(3) timely and adequate notice of the screening has been provided to all affected clients.

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

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

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

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

Disqualifications prescribed by this rule are subject to the following exceptions: (1) they may be waived by the affected client under the conditions stated in Rule 1.7; (2) they do not apply to a lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter, unless the lawyer knows that the lawyer or another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9 (a) with respect to the matter.

Comment

Definition of "Firm"

For purposes of the Rules of Professional Conduct, the term "firm" includes lawyers in a private firm, and lawyers employed in the legal department of a corporation or other organization, or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The

terms of any former agreement between associated lawyers are relevant in determining whether they are a firm as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

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

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.

Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1). The individual lawyer involved is bound by the Rules generally, including Rules 1.6, 1.7, and 1.9.

Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences, and therefore to the protections provided in Rules 1.6, 1.9, and 1.11. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore the government is better served in the long run by the protections stated in Rule 1.11.

Principles of Imputed Disqualification

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

Lawyers Moving Between Firms

When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from reforming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety proscribed in Canon 9 of the ABA Model Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.

Confidentiality

Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other

clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. Application of paragraphs (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought. Paragraphs (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(b). Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.

Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. *See* Rules 1.6 and 1.9.

Adverse Positions

The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by Rule 1.9(a). Thus, if a lawyer left one firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interest in the same or related matters, so long as the conditions of Rule 1.10(b) and (c) concerning confidentiality have been met.

Short-term Representation Exception

Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In such programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. For that reason, compliance with Rules 1.7, 1.9(a) or 1.10(a) is required only if the lawyer knows that the representation presents a conflict of interest for the lawyer or another lawyer in the firms is disqualified by Rules 1.7 or 1.9(a) in the matter.

A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2 (b). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the rules of Professional Conduct, including Rules 1.6 and 1.9(b), are applicable to the limited representation.

If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 (a)-(d) become applicable.

LEGAL ACCESS POINT

A Collaborative Program of the Hennepin County Bar Association Volunteer Lawyers Network and Hennepin County District Court

This program offers the public an opportunity to consult with an attorney, free of charge, at the Hennepin County Government Center in downtown Minneapolis (Mon, 9am-3pm and Tues – Fri, 9am-1pm) and at the Brookdale Courthouse in Brooklyn Center (Monday only, 12-2pm). Appointments are not scheduled; clients are seen in the order they arrive.

You can meet with a volunteer attorney for a 15-minute consultation. The volunteer attorney can provide brief advice and information on most legal matters. The attorney may be able to answer more detailed questions in their areas of practice.

Attorneys can answer the following types of questions:
What areas of law and what legal issues are involved in your situation?
What legal options are available to you?
Are there legal or social agencies that may be able to help you?
How do you find an experienced attorney and begin the court process?

CLIENTS: COMPLETE THIS SIDE ONLY

Name: ______________________________ Phone ______________

Address: ______________________ City: __________ State: ____ ZIP ________

How did you first learn about this program?

Courts	Agency	Other
☐ Self-Help Counter Clerk	☐ Lawyer Referral	☐ Friend or Family
☐ Judge or Judge's Clerk	☐ Legal Aid	☐ Walk by
☐ Other Court Staff	☐ Volunteer Lawyers Network	☐ Radio, TV or Newspaper
☐ City or County Attorney	☐ Social Service Agency	☐ Used before
☐ County Department	Name of Agency ______________	☐ Private Attorney
		☐ Other

Are you employed? FULL TIME PART TIME NOT EMPLOYED

Have you already spoken with a lawyer about this matter? YES NO

Are you represented by an attorney? YES NO

Has a court case been opened? YES NO

Are you a landlord seeking assistance with a rental problem? YES NO

I understand that the attorney I meet with today will not provide on-going legal assistance. I also understand and agree that the opposing party may now, or in the future, be represented by this attorney's law firm. However, I understand that anything that I tell the attorney today is privileged and confidential.

______________________ Client signature ______________________ Date

If your legal issue is more detailed and you would like to schedule a 30-minute consultation with an attorney familiar with your type of legal issue, contact the Hennepin County Bar Association at (612) 752-6666. A phone counselor will schedule an appointment with an attorney at a time and location convenient for you. You will be required to pay a $25 administrative fee for this service.

This side to be completed by Staff and Attorney

Date ______________ Time ______________ Attorney: ______________________

Volunteer with ☐ LRIS ☐ VLN

Brief description of question or legal concern:

Area of Law (check the ONE area that BEST describes):

☐ Bankruptcy	☐ Civil	☐ Criminal--Felony
☐ Debtor Creditor	☐ Conciliation Court	☐ Criminal--Misdemeanor
☐ Consumer	☐ Personal Injury	☐ Expungement--Criminal
☐ Collecting a Judgment	☐ Malpractice	☐ Driver's License
☐ Employment	☐ Housing *(check one:* ☐ Landlord ☐ Tenant*)*	
☐ Workers Comp.	☐ Expungement--Housing	☐ Tax
☐ Civil Rights/Discrim.	☐ Real estate (other)	☐ Business
☐ Family	☐ Juvenile Delinquency	☐ Wills or Probate
☐ Child Protection	☐ Other______________	☐ Immigration

Brief description of advice or information:

Client was referred to: (this is not an exhaustive list)

Family Law matters

☐ Volunteer Lawyers Network (612) 752-6677
☐ Legal Aid (612) 334-5970
☐ Low Fee Family Law Program (612) 752-6666
☐ Lawyer Referral and Information (612) 752-6666
☐ Catholic Charities Law office (651) 265-5706
☐ Chrysalis, A Center for Women (612) 871-0118
☐ Resource Ctr. for Fathers & Families (763) 783-4938
☐ SMRLS (Ramsey County) (651) 222-4731

Family Law Pro Se Programs

☐ Family Law Facilitator (Self Help Center)
☐ McKnight/Legal Aid Clinic (Self Help Center)

Civil matters

☐ Lawyer Referral and Information (612) 752-6666

Housing matters

☐ Legal Aid—Housing project (17th Floor HCGC)
☐ Volunteer Lawyers Network (612) 752-6677
☐ Legal Aid (612) 334-5970
☐ Homeline (952) 933-0017

Criminal matters

☐ Lawyer Referral and Info. (612) 752-6666
☐ Misdemeanor Defense Project (612) 752-6666
☐ Henn. County Public Defender (612) 348-7530
☐ Legal Rights Center (612) 337-0030

Social Service Agencies

☐ United Way--First Call for Help (651) 291-0211
☐ Chrysalis, A Center for Women (612) 871-0118
☐ Other ______________________

Excerpt from American Bar Association's
Ethics 2000 Modification to Model Rules of Professional Conduct

Rule 6.5 Nonprofit and Court-Annexed Limited Legal Services

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

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

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

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

Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the

need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

Excerpt from Maine Bar Rules

Rule 3. Code of Professional Responsibility and Comments

3.4 Commencement and Continuation of Representation.

(a) Disclosure of Interest. Before commencing any professional representation, a lawyer shall disclose to the prospective client any relationship or interest of the lawyer or of any partner, associate or affiliated lawyer, that might reasonably give rise to a conflict of interest under these rules. A lawyer has a continuing duty to disclose to the client any information that, in light of circumstances arising after the commencement of representation, might reasonably give rise to such a conflict of interest.

(b) Conflict of Interest: General Provisions.

(1) Basic Rule. A lawyer shall not commence or continue representation of a client if the representation would involve a conflict of interest, except as permitted by this rule. Representation would involve a conflict of interest if there is a substantial risk that the lawyer's representation of one client would be materially and adversely affected by the lawyer's duties to another current client, to a former client, or to a third person, or by the lawyer's own interests.

(2) Informed Consent. Whether a client has given informed consent to representation, when required by this rule, shall be determined in light of the mental capacity of the client to give consent, the explanation of the advantages and risks involved provided by the lawyer seeking consent, the circumstances under which the explanation was provided and the consent obtained, the experience of the client in legal matters generally, and any other circumstances bearing on whether the client has made a reasoned and deliberate choice.

(3) Imputed Disqualification.

(i) Except as otherwise provided in these rules, if a lawyer is required to decline or withdraw from representation under these rules for reasons other than health, no partner or associate, and no lawyer affiliated with the lawyer or the lawyer's firm, may commence or continue such representation.

(ii) If a lawyer or law student affiliated both with a law school legal clinic and with one or more lawyers outside the clinic is required to decline representation of any client solely by virtue of this paragraph (3), this paragraph imposes no disqualification on any other lawyer or law student who would otherwise be disqualified solely by reason of an affiliation with that individual, provided that the originally disqualified individual is screened from all participation in the

matter at and outside the clinic and that full disclosure of the disqualifying circumstances and the screening measures is given to all affected parties.

(c) Conflict of Interest: Simultaneous Representation.

(1) Representation Prohibited. Notwithstanding the consent of each affected client, a lawyer may not simultaneously represent, or continue to represent, more than one client in the same matter or group of substantially related matters when the matter or matters are the subject of litigation or any other proceeding for dispute resolution and the clients are opposing parties.

(2) Representation Permitted With Consent. In all other cases, if a conflict of interest exists, a lawyer may not undertake or continue simultaneous representation of more than one client except with the informed consent of each affected client to representation of the others. Consent is required even though representation will not occur in the same matter or in substantially related matters. Simultaneous representation in the same matter or substantially related matters is undertaken subject to the following additional conditions:

(i) The lawyer must reasonably believe (A) that each client will be able to make adequately informed decisions, and (B) that a disinterested lawyer would conclude that the risk of inadequate representation is not substantial, considering any special circumstances affecting the lawyer's ability to provide adequate representation of each client, such as the fact that the clients may seek incompatible results or pursue mutually disadvantageous tactics, or that their adverse interests may outweigh their common interests.

(ii) While engaged in simultaneous representation, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(iii) The lawyer shall terminate the simultaneous representation upon request of any client involved, or if any condition described in this paragraph (2) can no longer be met, and upon withdrawal shall cease to represent any of the clients in the matter or matters on which simultaneous representation was undertaken or in any substantially related matter, except with the consent of any clients who will no longer be represented.

(3) Settling Similar Claims. A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against those clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client has consented after being advised of the existence and nature of all the claims or pleas involved, and of the share of each person and the total amount of the settlement of a civil matter, or the participation of each person in the agreement in a criminal case.

(d) Conflict of Interest: Successive Representation.

(1) Interests of Former Clients.

(i) Except as permitted by this rule, a lawyer shall not commence representation adverse to a former client without that client's informed written consent if such new representation is substantially related to the subject matter of the former representation or may involve the use of confidential information obtained through such former representation.

(ii) When a lawyer becomes affiliated with a firm, the firm shall not accept or continue representation adverse to a former client of the lawyer, or the lawyer's previous law firm, without that client's informed written consent, if:

(A) Such representation involves the subject matter of former representation on which the lawyer personally worked; or

(B) The lawyer personally had acquired information protected by Rule 3.6(h) that is material to the new matter.

(iii) After a lawyer has terminated an affiliation with a firm, the firm shall not commence representation adverse to a former client represented by the formerly affiliated lawyer while affiliated with the firm without that client's informed written consent, if:

(A) The subject matter of the proposed representation is substantially related to the subject matter of the representation in which the formerly affiliated lawyer represented the client while affiliated with the firm; or

(B) Any lawyer remaining in the firm personally has information protected by Rule 3.6(h) that is material to the new matter.

(2) Successive Government and Private Representation.

(i) A lawyer shall not commence private representation in a matter in which the lawyer formerly represented the government of a state, or the United States, or any agency, entity, or political subdivision of the state or of the United States as client, or in which the lawyer participated personally and substantially as a public officer or employee, or when such private representation may involve the use of confidential information obtained through the former governmental representation or employment.

(ii) A lawyer shall not commence representation on behalf of the government of a state, or of the United States, or any agency, entity, or political subdivision of the state or of the United States, or participate as a public officer or employee, in a matter in which the lawyer participated personally and substantially on behalf of a former client or employer, or which may involve the use of confidential information obtained through such former representation, unless:

(A) Under applicable law, no one is or by lawful delegation may be authorized to act in the lawyer's stead in the matter, or

(B) Such new representation or participation is adverse to the interests of the former client or employer and the former client gives informed written consent.

(iii) If a lawyer is required to decline representation by virtue of subparagraph (i) of this paragraph, a disqualification imposed by Rule 3.4(b)(3)(i) may be waived by the informed written consent of the appropriate governmental officer or agency upon a showing that the lawyer required to decline representation will be screened from any participation in the matter and will be directly apportioned no part of the fees therefrom, and a finding that such waiver is not contrary to the public interest.

(iv) If a lawyer is required to decline representation or participation by virtue of ubparagraph (ii) of this paragraph, Rule 3.4(b)(3)(i) imposes no disqualification on lawyers employed with the lawyer in a governmental agency unless the subsequent representation is adverse. If a lawyer is required to decline representation because a former client would not give the consent provided by subparagraph (ii)(B) of this paragraph, a disqualification imposed by Rule 3.4(b)(3)(i) may be waived by the informed written consent of the former client. Alternatively, Rule 3.4(b)(3)(i) does not apply to lawyers employed in a governmental agency with the lawyer required to decline representation if that lawyer is screened from any participation in the matter and if written notice is given to the former client to enable the client to ascertain compliance with the provisions of this subparagraph.

(e) Conflict of Interest: Fiduciary or Other Legal Obligation to Another. Without the client's informed consent, a lawyer may not undertake or continue to represent a client in any matter with respect to which the lawyer has a fiduciary or other legal obligation to another person if the obligation presents a substantial risk of materially and adversely affecting the lawyer's representation of the client.

(f) Conflict of Interest: Lawyer's Own Interest.

(1) General Rule. Except with the informed written consent of the client, a lawyer shall not commence representation if there is a substantial risk that any financial interest or significant personal relationship of the lawyer will materially and adversely affect the lawyer's representation of the client.

(2) Avoiding Adverse Interest.

(i) A lawyer shall not knowingly acquire a property or pecuniary interest adverse to a client, or enter into any business transaction with a client, unless:

(A) The transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted to the client in manner and terms which should have reasonably been understood by the client;

(B) The client is advised and given a reasonable opportunity to seek independent professional advice of counsel of the client's choice on the transaction; and

(C) The client consents in writing thereto.

(ii) A lawyer shall not directly or indirectly purchase property at a probate, foreclosure, or judicial sale in an action or proceeding in which the lawyer or any partner or associate appears as attorney for a party or is acting as executor, trustee, administrator, guardian, conservator, or other personal representative.

(iii) Prior to conclusion of all aspects of the matter giving rise to representation of a client, the lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which the lawyer acquires an interest in publication rights with respect to the subject matter of the representation or proposed representation.

(iv) A lawyer shall not prepare an instrument giving the lawyer or a parent, child, sibling, or spouse of the lawyer any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(v) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice; nor shall a lawyer settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith. This rule shall not prevent a lawyer from settling or defending a malpractice claim.

(3) Familial Relations. A lawyer related to another lawyer as parent, child, sibling or spouse shall not, in the same or a substantially related matter, undertake or continue representation adverse to a person who the lawyer knows is represented by the related lawyer or a lawyer affiliated with that lawyer without the client's informed consent.

(4) Exception to Imputed Disqualification. If a lawyer is required to decline representation by virtue of a familial relationship under paragraph (3) of this subdivision or any other significant personal relationship under paragraph (1) of this subdivision, Rule 3.4(b)(3)(i) imposes no disqualification upon the partners or associates of the lawyer or upon any other lawyer affiliated with the lawyer or the lawyer's firm.

(g) Other Restrictions.

(1) When Lawyer May Be Called as Witness.

(i) A lawyer shall not commence representation in contemplated or pending itigation if the lawyer knows, or should know, that the lawyer is likely or ought to be called as a witness. This rule does not apply where the predictable testimony will relate solely to uncontested matters or to legal services furnished by the lawyer, or where the distinctive value of the lawyer in the particular case would make denial a substantial hardship on the client.

(ii) A lawyer may commence representation in contemplated or pending litigation if another lawyer in the lawyer's firm is likely or ought to be called as a witness, unless such representation is precluded by subdivisions (b), (c), (d), (e), or (f) of this rule.

(2) Prior Judicial Activity.

(i) A lawyer shall not commence representation in a matter in which the lawyer participated personally and substantially as a judge or judicial law clerk. A lawyer shall not commence representation in a matter in which the lawyer participated personally and substantially as a nonjudicial adjudicative officer, arbitrator (other than a party's chosen member of a multi-member panel), or law clerk to such a person, unless all parties to the proceeding give informed consent.

(ii) If a lawyer is required to decline representation by virtue of this paragraph, Rule 3.4(b)(3)(i) imposes no disqualification upon the partners or associates of the lawyer or upon any other lawyer affiliated with the lawyer or the lawyer's firm, provided that the lawyer required to decline representation is screened from any participation in the matter and will be directly apportioned no part of the fees

therefrom, and full disclosure of the circumstances and the measures taken to screen the lawyer required to decline representation is given to all affected parties.

(3) Non-payment of Prior Lawyer. A lawyer shall not refuse to commence or continue representation on the ground that the client's prior lawyer has not been paid.

(4) Other Violations. A lawyer may not commence or continue representation that the lawyer knows or should know would lead to a violation of other provisions of these rules.

(h) Mediation. A lawyer may act as mediator for multiple parties in any matter, whether or not their interests are opposing or adverse and whether or not they are represented by independent counsel, subject to the following conditions:

(1) The lawyer must clearly inform the parties of the nature and limits of the lawyer's role as mediator and should disclose any interest or relationship likely to affect the lawyer's impartiality or that might create an appearance of partiality or bias. The parties must consent to the arrangement unless they are in mediation pursuant to a legal mandate.

(2) The role of mediator does not create a lawyer-client relationship with any of the parties and does not constitute representation of any of them. The lawyer shall not attempt to advance the interests of any of the parties at the expense of any other party.

(3) While acting as mediator, the lawyer may not represent any of the parties in court or in the matter under mediation or any related matter. The lawyer must reasonably believe that the mediation can be undertaken impartially and without improper effect on any other responsibilities that the lawyer may have to any of the parties.

(4) The lawyer may draft a settlement agreement or instrument reflecting the parties' resolution of the matter but must advise and encourage any party represented by independent counsel to consult with that counsel, and any unrepresented party to seek independent legal advice, before executing it.

(5) The lawyer shall withdraw as mediator if any of the parties so requests, or if any of the conditions stated in this subdivision (h) is no longer satisfied. Upon withdrawal, or upon conclusion of the mediation, the lawyer shall not represent any of the parties in the matter that was the subject of the mediation, or in any related matter.

(6) The lawyer shall not use any conduct, discussions, or statements made by any party in the course of the mediation to the disadvantage of any party to the mediation or, without the informed consent of the parties, to the advantage of the lawyer or a third person.

(7) If a lawyer is required to decline representation by virtue of this paragraph, Rule 3.4(b)(3)(i) imposes no disqualification upon the partners or associates of the lawyer or upon any other lawyer affiliated with the lawyer or the lawyer's firm, provided that the lawyer required to decline representation is screened from any participation in the matter and will be directly apportioned no part of the fees therefrom, and full disclosure of the circumstances and the measures taken to screen the lawyer required to decline representation is given to all affected parties.

(i) Limited Representation. A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client provides informed consent after consultation. If, after consultation, the client consents in writing (the general form of which is attached to these Rules), an attorney may enter a limited appearance on behalf of an otherwise unrepresented party involved in a court proceeding. A lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto which is filed with the court, may not thereafter limit representation as provided in this rule.

ATTACHMENT A
Maine Bar Rule 3.4(i)
Promulgation Order of May 15, 2001

(Used in conjunction with Rule 3.4(i) the following form shall be sufficient to satisfy the rule. The authorization of this form shall not prevent the use of other forms consistent with this rule.)

LIMITED REPRESENTATION AGREEMENT

To Be Executed In Duplicate

Date:, 20

1. The client, , retains the attorney, ____________________, to perform limited legal services in the following matter: ____________v.____________.

2. The client seeks the following services from the attorney (indicate by writing "yes" or "no"):

a. Legal advice: office visits, telephone calls, fax, mail, e-mail;

b. Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;

c. Evaluation of client self-diagnosis of the case and advising client about legal rights and responsibilities;

d. Guidance and procedural information for filing or serving documents;

e. Review pleadings and other documents prepared by client;

f. Suggest documents to be prepared;

g. Draft pleadings, motions, and other documents;

h. Factual investigation: contacting witnesses, public record searches, in-depth interview of client;

i. Assistance with computer support programs;

j. Legal research and analysis;
k. Evaluate settlement options;

l. Discovery: interrogatories, depositions, requests for document production;

m. Planning for negotiations;

n. Planning for court appearances;

o. Standby telephone assistance during negotiations or settlement conferences;

p. Referring client to expert witnesses, special masters, or other counsel;

q. Counseling client about an appeal;

r. Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;

s. Provide preventive planning and/or schedule legal check-ups:

t. Other:

3. The client shall pay the attorney for those limited services as follows:

a. <u>Hourly Fee</u>:

The current hourly fee charged by the attorney or the attorney's law firm for services under this agreement are as follows:

i. Attorney: $
ii. Associate: $
iii. Paralegal: $
iv. Law Clerk: $

Unless a different fee arrangement is established in clause b.) of this paragraph, the hourly fee shall be payable at the time of the service. Time will be charged in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour.

b. <u>Payment from Deposit</u>:

For a continuing consulting role, client will pay to attorney a deposit of $_____________, to be received by attorney on or before____________, and to be applied against attorney fees and costs incurred by client. This amount will be deposited by attorney in attorney trust account. Client authorizes attorney to withdraw funds from the trust account to pay attorney fees and costs as they are incurred by client. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by client for attorney fees and costs is less than the amount of the deposit, the difference will be refunded to client. Any balance due shall be paid within thirty days of the termination of services.

c. <u>Costs</u>:

Client shall pay attorney out-of-pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense and postage. All costs payable to third parties in connection with client case, including filing fees, investigation fees, deposition fees, and the like shall be paid directly by client. Attorney shall not advance costs to third parties on client behalf.

4. The client understands that the attorney will exercise his or her best judgment while performing the limited legal services set out above, but also recognizes:

a. the attorney is not promising any particular outcome,

b. the attorney has not made any independent investigation of the facts and is relying entirely on the client limited disclosure of the facts given the duration of the limited services provided, and

c. the attorney has no further obligation to the client after completing the above described limited legal services unless and until both attorney and client enter into another written representation agreement.

5. If any dispute between client and attorney arises under this agreement concerning the payment of fees, the client and attorney shall submit the dispute for fee arbitration in accordance with Rule 9(e)-(k) of the Maine Bar Rules. This arbitration shall be binding upon both parties to this agreement.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Signature of client   Signature of attorney

(j) Non-Profit and Court-Annexed Limited Legal Service Programs. A lawyer who, under the auspices of a non-profit organization or a court-annexed program, provides limited representation to a client without expectation of either the lawyer or the client that the lawyer will provide continuing representation in the matter is subject to the requirements of Rules 3.4(a)-(e) only if the lawyer knows that the representation of the client involves a conflict of interest.

Both lawyer and client have authority and responsibility to determine the objectives and means of representation. The scope of services to be provided by a lawyer may be limited by agreement with the client. In situations where the lawyer will not be providing limited representation in court, the limited representation agreement need not be in writing, but must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law and the client's needs in order to handle a common and typically uncomplicated legal problem, the lawyer and the client may agree that the lawyer's services will be limited to a brief telephone consultation or office visit. Such a limitation, however, will not be reasonable if the time allotted was not sufficient to yield advice upon which the client can rely. Although an agreement for limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer's advice may be based upon the scope of the representation agreed upon by the lawyer and client, and the client's representation of the facts.

The reasons a writing memorializing the agreement is not required in all contexts include (by way of example) the problem non-profit and court annexed legal services programs face in securing such a writing from their clients, and the time entering into the agreement takes in proportion to the time consumed by the limited representation itself. Nevertheless, to the extent a writing may be obtained, it is a better practice to do so for both the lawyer and the client.

In situations involving limited representation in court of an otherwise unrepresented party, a written memorandum of the scope of representation is required. A lawyer providing limited representation in court proceedings should include in the consultation with the client an explanation of the risks and benefits of the limited representation. The general form of the agreement is attached to the Code of Professional Responsibility.

Limited representation may not be provided by a lawyer who signs a complaint, counterclaim, cross-claim or any amendment thereto, which is filed with the court.

Legal service organizations, courts, and various non-profit organizations have established programs through which lawyers provide limited legal services--typically advice--that will assist persons with limited means to address their legal problems without further representation by a lawyer. In these programs, such as legal advice hotlines, advice-only clinics, lawyer for the day programs in criminal or civil matters, or unrepresented party counseling programs, an attorney-client relationship is established, but there is no expectation that the lawyer representation of the client will continue beyond the limited consultation. It is the purpose of this Rule to provide guidance to lawyers about their professional responsibilities when serving a client in this capacity.

Because a lawyer who is representing a client in the circumstances addressed by this Rule is not able to check systematically for conflicts of interest, paragraph (j) only requires compliance with Rules 3.4(a)-(e) if the lawyer knows, based on reasonable recollection and information provided by the client in the ordinary course of the consultation, that the representation presents a conflict of interest. A conflict of interest that would otherwise be imputed to a lawyer because of the lawyer association with a firm will not preclude the lawyer from representing a client in a limited services program. Nor will the lawyer participation in such a program preclude the lawyer's firm from undertaking or continuing the representation of clients with interests adverse to a client being represented under the program's auspices.

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