SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY
10,005 East Osborn Road
Scottsdale, AZ 85256

ORDINANCE NUMBER SRO-588A-2025

AN AMENDMENT TO CHAPTER 5, BY ADDING ARTICLE VIII, REGULATION OF THE PRACTICE OF LAW, WHICH INCLUDES DIVISION 1: RULES AND APPLICATION FOR ADMISSION TO PRACTICE, DIVISION 2: RULES OF PROFESSIONAL CONDUCT, AND DIVISION 3: RULES OF JUDICIAL CONDUCT.

This amendment rescinds and replaces all previous rules relating to the ethical practice of law within the Community, whether existing in code, administrative order, or otherwise.

Chapter 5, Article VIII, Division 1, Division 2, and Division 3 is hereby enacted effective May 5, 2025, to read as follows:

Division 1. Rules and Application for Admission to Practice.

I. Licensing Requirement.

No person, including employees or agents of any Salt River Pima-Maricopa Community agencies and departments such as the Prosecutor, Defense Advocate, Staff Attorney, Court Solicitor, and Legal Services, may practice before the Salt River Pima-Maricopa Indian Community Court ("Community Court") unless that person has been admitted pursuant to these rules.

Exception: For any case pending before the Community Court, any litigant, subject to the approval of the Court, may be self-represented or designate a spokesperson who is a relative by blood or any enrolled member of the Community provided that such relative by blood or enrolled member of the Community is not an employee of the Community Court and no fee is charged for services rendered.

Minimum Requirements: Any applicant for admission to practice before the Community Court, whether on a permanent or temporary (pro hac vice) basis, shall meet the following minimum requirements:

A. Be at least 21 years old at the time of application;
B. Have completed an application for admission as set forth in these rules;
C. Provide proof of graduation from High School or completion of a GED unless the applicant provides proof of a college or professional degree;
D. Provide a certificate of good standing (or the equivalent as determined by the Admissions Committee) from every State and/or any Tribe within Arizona in which the lawyer currently is licensed to practice;

E. Demonstrated good character, which shall be determined by the Admissions Committee.

II. Establishment of Admissions Committee.

A. The Admissions Committee ("Committee") is established under the budget and control of the Court Administrator. The Committee shall consist of the Director of each legal department (or their designee), the Presiding Judge of the Community Court (or their designee), a Court Solicitor (as assigned by the Court Administrator), the Court Administrator (or their designee), and two Community members at large. The role of Committee Chair shall be filled by the Court Administrator (or their designee).

B. The Admissions Committee shall be responsible for admission procedures, including but not limited to the following, as more fully set forth in these rules:

a. establishment and approval of the Character and Fitness Application for admission;
b. establishment and administration of the Admissions Examination;
c. collection and review of character and fitness information;
d. conducting interviews or hearings as appropriate regarding any applicant the Committee deems to require additional scrutiny;
e. making final, non-appealable decisions on admission;
f. establishment and administration of the Professionalism Course;
g. ensure compliance with Continuing Legal Education requirements.

III. Admissions Examination.

Except for advocates already admitted to practice before the Community Court on January 1, 2025, each applicant for admission shall take and receive a passing score on an Admissions Examination. The Committee shall establish and administer the Admissions Examination and shall have authority and discretion to determine the manner of taking the examination, the passing score, and the subject matters covered on the examination; however, the examination shall cover, at a minimum, the Community Code (civil, juvenile, and criminal), the Community's Rules of Professional Conduct, and the Community's Rules of Judicial Conduct. The examination may be in "open book" format and/or include multiple choice questions, short essays, or any combination thereof.

IV. Character and Fitness Application.

A. The Committee shall establish a Character and Fitness Application ("Application") that each applicant for admission must complete and sign under oath. No applicant shall be admitted until the Committee is satisfied with reasonable promptness that the applicant has the requisite character and fitness to practice in the Community.

B. The Application shall require the applicant to disclose, at a minimum, under penalty of perjury:

1. Five years of employment information, including the dates of employment, the nature of the employment, the name and contact information for the applicant's direct supervisor at each place of employment, and the reason for leaving each employment. If the applicant was a student during the preceding five years, the applicant's school information will be sufficient to fulfill all or part of this requirement.

2. All post high school education with full disciplinary records inclusive of actual disciplinary sanctions (whether academic or behavioral) and disciplinary investigations or proceedings that did not result in sanctions.

3. Any civil action, including divorce or other family matter, in which the applicant was a party in the preceding 10 years.

4. Other professional licenses and any disciplinary investigation or proceedings (or resignation in lieu of an investigation or proceeding) in the preceding seven years, whether or not the investigation or proceeding resulted in disciplinary action.

5. Any allegation of the unauthorized practice of law in any state or jurisdiction.

6. Any allegation against the applicant of fraud, perjury, misrepresentation, or false swearing in a judicial or administrative proceeding.

7. Whether as an adult or a juvenile, the applicant has been served with a criminal summons, questioned, arrested, taken into custody, indicted, charged with, tried for, pleaded guilty to or been convicted of, or ever been the subject of an investigation concerning the violation of any law, statute, ordinance, rule, regulation, or canon (including all incidents, no matter how trivial or minor the infraction or whether guilty or not, whether expunged or not, whether the applicant believes or was advised that they need not disclose any such instance).

8. Traffic citations in the last seven years (whether guilty or not, expunged or not), including all moving and non-moving violations that resulted in a fine of $50 or more.

9. Military record, if any.

10. Three references, one of which shall be a professional reference.

11. Any additional information the applicant believes is relevant to their application for admission.

C. The Committee shall treat the contents of each Application as private and confidential. Applications shall not be inspected by any person not directly involved in the admission process.

V. Professionalism Course.

The Committee shall establish and provide for the administration of a Professionalism Course specific to the Salt River Pima-Maricopa Community and the expectations of the Community Council and Community Court as they pertain to standards of professionalism that are and shall be expected of all advocates practicing in the Community. The Professionalism Course must be completed within one (1) year of admission, or for advocates already admitted on January 1, 2025, before January 1, 2027, with proof thereof provided to the Committee in a manner to be established by the Committee. The Professionalism Course shall be taken once only unless ordered by the Judicial, Attorney and Advocate Discipline Commission ("Discipline Commission").

VI. Continuing Legal Education.

Each person admitted to practice before the Community Court shall complete three (3) hours of Continuing Legal Education ("CLE") annually between July 1 and June 30. The Committee shall establish parameters for acceptable CLE to meet this requirement. Each person admitted to practice in the Community must provide information related to their CLE requirement in the form of an affidavit to be developed by the Committee.

Any advocate who fails to meet CLE requirements shall be designated "inactive" to practice in the Community. Their "inactive" status shall not be considered or deemed disciplinary in nature. An advocate designated as "inactive" can be reinstated to active status if the advocate within five (5) years of being designated "inactive" makes up all their cumulative delinquent CLE requirements and provides an affidavit to that effect to the Committee. After five (5) years of "inactive" status for failure to meet CLE requirements, a person wishing to be reinstated must apply for admission as though the applicant were applying for the first time, including successful completion of all admissions requirements. A person may apply for relief from this rule by filing a petition with the Committee stating good cause for the requested relief.

VII. Ongoing Duty to Report.

Each advocate admitted to practice in the Community shall have an ongoing duty to report to the Committee any final disciplinary sanction or diversion imposed by any other jurisdiction. The report must be made within thirty (30) days of the effective date of the sanction. The Committee shall forward any such report to the Discipline Commission for consideration for possible disciplinary action.

VIII. Pro Hac Vice Admission.

The Committee shall establish rules and procedures for admission to practice before the Community Court on a temporary basis. The Presiding Judge shall have final authority to admit or deny an application for Pro Hac Vice admission.

IX. Oath of Office.

Upon satisfying the qualifications for admission, the Court Administrator shall arrange for the applicant to be admitted under oath either in open court or by signing a written oath before a

notary public. The form of the oath shall be prescribed by the Admissions Committee and shall include, at a minimum, swearing to support the Constitution of the Salt River Pima-Maricopa Indian Community and conform to all Community laws and regulations and all rules and orders of the Community Court.

X. Practice Pending Admission.

An applicant who currently holds an active license to practice law in another tribal or state jurisdiction, and who has been primarily engaged in the active practice of law for three of the five years immediately preceding applying for admission under these rules, may provide legal services before the Community Court for no more than 365 days, provided that the applicant:

A. Is in good standing in all courts and jurisdictions in which the applicant currently is admitted to practice;
B. Is not currently subject to an order of discipline or the subject of a pending disciplinary or disability investigation in any jurisdiction;
C. Has first submitted an application for admission to practice before the Community Court;
D. Reasonably expects to fulfill all of the requirements for admission;
E. Associates with and is supervised by an advocate licensed to practice before the Community Court and discloses in writing to the Admissions Committee and the Presiding Judge the name and contact information of that advocate;
F. Provides to the Admissions Committee and the Presiding Judge a signed declaration of the licensed advocate certifying the applicant's association with and supervision by that advocate;
G. Affirmatively states in all communications and Court documents that the applicant's application for admission is pending.

XI. Certified Limited Practice Students.

The purpose of this provision is to provide law school students supervised instruction and training in the practice of law for a limited time and to provide volunteers opportunities.

A. To be eligible to become a Certified Limited Practice Student, an applicant must:
    1. Have successfully completed legal studies amounting to at least two semesters, or the equivalent academic hour , at an ABA accredited law school;
    2. Neither ask for nor receive compensation or remuneration of any kind for services rendered by the Certified Limited Practice Student from the person on whose behalf the services are rendered (payment by the Community, however, is permitted);
    3. Certify in writing that the student has read the Community's Rules of Professional Conduct;
    4. Be certified by the Dean of the law school that the student is in good academic standing, of good character, and as has either completed, enrolled in, or is currently attending academic courses in civil procedure, criminal law, evidence, and professional responsibility.

B. Applicants to become a Certified Limited Practice Student shall:
    1. Submit an application to the Admissions Committee in a form to be determined by the Committee;
    2. Attest that the applicant meets all of the requirements set forth in this rule;
    3. Submit a written statement by the applicant's supervising advocate stating the period of time during which the supervising advocate will assume supervisory responsibility for the applicant.
C. A Certified Limited Practice Student shall be authorized to:
    1. Appear in Community Court in the presence of the supervising advocate on behalf of any person who has consented in writing to that appearance, which consent shall be filed with the Court and brought to the attention of the Judge presiding over the matter at issue;
    2. Prepare pleadings and other documents to be filed in any matter in which the Certified Limited Practice Student is eligible to appear in Court, provided such pleadings are signed by the supervising advocate;
    3. Give legal advice and perform other legal services but only with the consent of the supervising advocate;
    4. Use the term Certified Limited Practice Student whenever holding themselves out to the Court, clients, and the public in respect to any matter in which they are involved pursuant to this rule.

Division 2. Rules of Professional Conduct.

Salt River Pima-Maricopa Indian Community
Model Rules of Professional Conduct
Table of Contents

Transactions with Persons Other Than Clients

SRP-MIC Legal Departments, Advocate Firms, and Associates

Public Service

Information About Legal Services

Maintaining the Integrity of the Profession

Preamble

These Rules of Professional Conduct apply equally to (1) advocates who are licensed to practice law in another jurisdiction and have been approved to practice before the Court of the Salt River Pima-Maricopa Indian Community, and (2) advocates who are permitted to represent clients before the Court of the Salt River Pima-Maricopa Indian Community but who are not licensed to practice law in any tribe, state or territory of the United States. The Rules serve not only as a maxim for practice and advocacy before the Court of the Salt River Pima-Maricopa Indian Community, but also to acknowledge and promote the concept that service to others is central to the principles of custom and tradition as understood by the Onk Akimel O'odham and Xalychidom Piipaash people.

A Salt River Pima-Maricopa Indian Community advocate is a legal professional, a representative of clients, and an officer of the Community's Court. An advocate has a special responsibility to provide the highest quality of service to each client. As a representative of clients, an advocate performs various functions that require knowledge of the law, keeping up to date with changes in the law, and sensitivity to matters that are culturally relevant. An advocate is responsible to maintain meaningful client communication, to be prompt and diligent in the representation of his or her clients, and to advise each client of his or her legal rights and options as well as assist in the explanation of the possible outcomes of an individual's decisions.

Communications between the advocate and client must be confidential and consistent with these Rules of Professional Conduct or other law. An advocate should use the law's procedures only for legitimate purposes and not to harass or intimidate others. An advocate should demonstrate respect for the legal system and for those who serve it including judges, other advocates, and public officials. An advocate has a duty to uphold the legal process, and at all times, be candid with, and respectful to, the tribunal. Any participant in the Community judicial system should endeavor to resolve disputes with other participants and address any ethical concern regarding another participant directly before referring a matter for possible disciplinary review. An advocate should comply with the letter and spirit of these Rules in order to make the Court of the Salt River Pima-Maricopa Indian Community work fairly and efficiently.

The Rules of Professional Conduct are rules of reason that are designed to provide guidance to advocates, the courts, and members of the Community, and to provide a structure for all to understand and guide their conduct in the best interests of clients and the Community's system of justice. The Rules also are intended to regulate advocates' conduct and, when necessary, to investigate potential misconduct through the disciplinary process. Disciplinary assessment of an advocate's conduct should be made on the basis of the advocate's knowledge of relevant circumstances at the time of the conduct and with recognition of the fact that advocates must at times act based on incomplete knowledge of relevant facts and at times while making professional decisions that have to balance competing interests.

The Rules presuppose a larger legal and cultural context shaping the advocate's role. That context includes court rules and statutes relating to matters of licensure to practice in the Community, laws defining representation of clients in the Community, and substantive and

procedural law in general. The Rules do not exhaust the cultural, moral, and ethical considerations that should inform an advocate's conduct and professional judgment. No human activity can be completely defined by the legal rules.

The Rules are not designed to be a basis for civil liability, or to be used by opposing parties as procedural weapons. Violation of a rule should not in itself give rise to a cause of action against an advocate, nor should it create any presumption in such a case that a legal duty has been breached. Additionally, a violation of a rule does not necessarily warrant disciplinary or non-disciplinary remedies, such as disqualification of an advocate in pending litigation.

Some Rules are followed by a comments section. These comments are meant to explain and illustrate the meaning and purpose of the rule. The comments are intended as guides to interpretation of the Rules.

Client-Advocate Relationship

Rule 1.1 Competence

An advocate shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent representation includes appearing on time and being prepared for scheduled court proceedings. An advocate may accept representation when reasonable study and preparation can raise his or her competence to that needed for a particular case. In determining whether an advocate employs the necessary knowledge and skill in a particular matter, relevant factors include the complexity of the matter, the advocate's experience, the amount of time to study and prepare the case; and whether it may be helpful either to refer the matter to another advocate who is competent in the field in question, or to work with another advocate on the case. In emergency situations, an advocate may provide limited assistance (as opposed to representation) in a matter in which the advocate does not have the required legal knowledge or skill and when referral to or consultation with another advocate is impractical. This type of emergency assistance shall be limited to that reasonably necessary under the circumstances. To maintain the necessary knowledge and skill, an advocate should keep up to date about changes in the law and its practice, engage in continuing study and education, including cultural awareness and sensitivity, and comply with all continuing legal education requirements to which the advocate is subject.

Rule 1.1 Competence - Comment

Thoroughness and Preparation

[1] In deciding whether to undertake representation of a client, an advocate should consider that competent handling of a particular matter includes:

a. the ability to consider and analyze the factual and legal elements of the problem, and

b. the ability to then apply the methods and procedures that meet the standards of competent practitioners,

c. adequate preparation which is determined in part by what is at stake (major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence), and

d. the advocate's workload.

Cultural Competence

[2] An advocate should endeavor at all times to be culturally competent. An advocate can refer to the SRP-MIC Cultural Resources Department website for information and programs to become culturally competent. To be culturally competent means having the capacity to provide effective legal representation that is grounded in an awareness of and sensitivity to the various people that the SRP-MIC Court serves. A cultural group is identified by the shared beliefs, values, customs and behaviors that define it, and is particularly important with racially, ethnically and culturally

distinct communities, including those who use a language other than English. Cultural competence is also important for persons with disabilities. Cultural competence and the degree to which an advocate demonstrates appreciation for and understanding of cultural factors are important attributes for an advocate because culture can affect the quality of the advocate-client relationship, the effectiveness of communication between an advocate and client, the advocate's understanding of a client's objectives for the representation, a client's reactions to conflict, a client's perceptions of the legal system, and other aspects of the legal system.

Rule 1.2 Scope of Representation and Allocation of Authority between Client and Advocate

(a) An advocate shall abide by a client's decisions concerning the objectives of representation, subject to subsections (b), and (d), and shall consult and communicate with the client as to the means by which they are to be pursued. An advocate shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the advocate shall abide by the client's decision, after consultation with the advocate, as to a plea to be entered, whether to waive jury trial, whether to accept or deny a plea agreement, and whether the client will testify. At the outset of a representation, the client may authorize the advocate to take specific action on the client's behalf without further consultation. Absent a material change in circumstances, an advocate may rely on such advance authorization. The client may, however, revoke such authority at any time.

(b) The advocate and the client may agree to limit the scope of the representation. An advocate undertaking a limited-scope representation must have the knowledge and skill to perform those tasks competently and must also know enough to counsel the client regarding the advisability of the action contemplated. The scope of the representation may be limited only if the limitation is reasonable under the circumstances and the client gives written consent after consultation.

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

(d) An advocate shall not counsel a client to engage, or assist a client, in conduct that the advocate knows is criminal or fraudulent, but an advocate may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law. An advocate may not continue assisting a client in conduct that the advocate originally supposed was legally proper but then discovers is criminal or fraudulent. The advocate must, in such a situation, withdraw from the representation of the client in the matter. In some cases, withdrawal alone might be insufficient. It may be necessary for the advocate to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation, or the like. In extreme cases, an advocate may be required to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. *See also* Rule 1.15.

(e) If the advocate has a fundamental disagreement with the client, the advocate may decline the representation or withdraw from the representation provided the advocate is not prevented from withdrawal pursuant to a court order, Rule 1.16, or other law. Fundamental disagreement shall

mean disagreement as to an issue of material importance between the advocate and client that cannot be resolved and that adversely affects the client/advocate relationship. In civil cases, the client may resolve the disagreement by representing themselves, or by discharging the advocate, with the understanding that any subsequent counsel may be retained or appointed at the client's expense. In criminal cases, the client may resolve the disagreement by representing themselves or hiring an advocate, at the client's own expense.

Rule 1.2 Scope of Representation and Allocation of Authority between Client and Advocate - Comment

Allocation of Authority between Client and Advocate

[1] In a case in which the client appears to be suffering diminished mental capacity, the advocate's duty to abide by the client's decisions is to be guided by Rule 1.13.

Limited Scope Representations

[2] Limited-scope representation occurs when an advocate represents or assists a client with part, but not all, of the client's legal matter. Limited representation by government provided advocates differs significantly from limited representation for paying clients. When an advocate is provided by the government, an advocate, not the client, determines what services will be provided. As such, a burden is placed on the advocate to carefully consider when limited representation is offered and the implications limited representation presents in terms of a client's informed consent and the client's ability and means to secure additional representation, if desired.

[3] Although an agreement for limited representation does not exempt an advocate from the duty to provide competent representation, the limitation is a factor to consider when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[4] All agreements concerning an advocate's representation of a client must accord with the Rules of Professional Conduct and other SRP-MIC law. See Rules 1.1, 1.8, and 5.6.

Rule 1.3 Diligence

An advocate shall act with reasonable diligence and promptness in representing a client. Diligence includes making best efforts to communicate with clients. An advocate should pursue a matter diligently on behalf of a client to the best of the advocate's ability and take whatever lawful and ethical measures are required to advance the client's cause with reasonable speed. To that end, an advocate may have authority to choose the methods in which a matter is pursued and to make strategic decisions designed to advance the client's cause without undue delay.

Rule 1.3 Diligence - Comment

[1] An advocate's duty to act with reasonable promptness does not prevent an advocate from agreeing to a reasonable request for a postponement of a hearing or deadline when it will not negatively affect the advocate's client. However, such actions as failing to communicate with reasonable promptness a plea offer, to notify a client of the receipt of funds on their behalf, failing to promptly remit those funds to clients entitled to receive them, delaying responding to client's inquiries and requests to access their files, and delays in preparing and filing papers on their behalf may be factors for consideration in determining whether violations of the advocate's duty of diligence has occurred.

Rule 1.4 Communication

(a) An advocate shall:

(1) promptly inform the client of any decision or circumstance under these Rules that require informed consent, as defined in Rule 1.0(e);

(2) reasonably consult with the client about the methods which the client's goals are to be accomplished and inform the client of relevant limitations on the advocate's conduct if the client expects the advocate to take actions not permitted by the Rules of Professional Conduct or other law;

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

(4) promptly comply with reasonable requests for information.

(b) An advocate shall fully explain a matter to the client so the client can make informed decisions regarding the representation. An advocate shall promptly consult with the client and obtain consent prior to taking action unless the client previously has given direction as to how the client wishes the advocate to handle the matter.

(c) In a criminal case, an advocate shall promptly inform a client of all extended plea agreements.

Rule 1.4 Communication - Comment

Communicating with Client

[1] The client should have enough information to help make informed decisions concerning the goals of the representation and the methods by which they are to be used to reach such goals should the client wish to do so. Ordinarily, the information and explanation to be provided is that appropriate for a client who is a comprehending and responsible adult. As an advisor, an advocate should consider both legal and practical information in deciding how to counsel a client. See Rule 2.1.

[2] An advocate should promptly respond to or acknowledge all client communications, including telephone calls, emails, text messages, etc. When a client makes a reasonable request for information, requested information should be provided within a reasonable time. If a prompt

response is not possible, then the advocate or a member of the advocate's staff should acknowledge receipt of the request and advise the client as to when a response may be expected. See also Rule. 5.1and Rule 5.3 for responsibilities of supervisory advocates.

[3] Circumstances may arise in which communication with a client does not occur due to an unavailable or unresponsive client. In these situations, representation becomes difficult, and an advocate may but is not required to withdraw under Rule 1.15. The advocate must still make reasonable efforts to locate and communicate with the client and, if necessary, inform the client of the advocate's intent to withdraw. If an advocate elects to withdraw due to a client's failure to respond or be available to the advocate, the advocate must nevertheless protect client confidences when moving to withdraw. See Rule 1.6.

Clients with Diminished Capacity

[3] Fully informing a client of information sufficient for the client to make informed decisions about the representation may be difficult or impossible where the client is a child or suffers from diminished capacity. In such a situation, the advocate must carefully consider what the client is capable of understanding given the client's age, education, mental capacity, etc. See Rule 1.13.

Withholding Information

[4] In specific circumstances, an advocate may be justified in delaying transmission of information when the client's reaction is likely to be harmful to the client. For example, an advocate might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. An advocate may not withhold information to serve the advocate's own interests or the interests of another person.

Rule 1.5 Fees

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

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

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

(3) the facts involved in the case and the results obtained;

(4) the time constraints imposed by the client or by the circumstances;

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

(6) the experience, reputation, and ability of the advocate(s) performing the services; and

(7) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the advocate will charge a regularly represented client on the same basis or rate. Changes in the basis or rate of the fee or expenses shall also be communicated to the client in writing and reviewed with the client before or within a reasonable time of the change. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing before the fees or expenses to be billed at higher rates are actually incurred. The requirements of this subsection do not apply to: (1) court-appointed advocates who are paid by a court or other governmental entity, and (2) advocates who provide pro bono short-term limited legal services to a client pursuant to Rule 6.5.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be signed by both the advocate and the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the advocate in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses the client will be responsible for, independent of the outcome of the matter. Upon conclusion of a contingent fee matter, the advocate shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, an accounting showing all of the disbursements of the original recovery amount, the remittance to the client and the method of determination.

(d) An advocate shall not enter into an arrangement for, charge, or collect:

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

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

(3) a fee denominated as "earned upon receipt," "nonrefundable" or in similar terms unless the client is simultaneously advised in writing that the client may nevertheless discharge the advocate at any time and in that event may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to paragraph (a).

(e) Two or more advocates, or their respective firms, jointly working on a matter may divide a fee if:

(1) the advocates or firms disclose to the client in writing how the fee will be divided and how the advocates or firms will divide respective responsibility for the matter among themselves;

(2) the client consents to the division of the fees in a writing signed by the client;

(3) the total fee is reasonable; and

(4) the division of responsibility among the advocates or firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.

Rule 1.5 Fees – Comment

Reasonableness of Fee and Expenses and Basis or Rate of Fee

[1] The Rule requires that advocates charge fees and expenses that are reasonable under the circumstances. In any client-advocate relationship, an understanding as to fees and expenses must be promptly established. The advocate should furnish the client with at least a simple memorandum, email or copy of the advocate's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. An advocate may seek reimbursement for the reasonable cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the advocate.

[2] In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, an advocate must consider the factors and any applicable law that are relevant under the circumstances.

Terms of Payment

[3] An advocate may require advance payment of a fee but is obliged to return any unearned portion as described in Rule 1.15(d). An advocate should not enter into an agreement whereby services are to be provided only up to a stated amount when it is likely that more extensive services will be required unless the situation is adequately explained to the client. Otherwise, the client might have to negotiate for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. An advocate should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

[4] An advocate cannot contract for a contingent fee for legal representation when collecting support, alimony or other financial payments pursuant to a Petition for Comity.

Division of Fee

[5] A division of fee is a single billing to a client covering the fee of two or more advocates who are not in the same firm. The client must agree to the arrangement, including the share that each advocate is to receive, and the agreement must be confirmed in writing by all parties. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the advocates were associated in a partnership. A referral should be made only when the referring advocate reasonably believes that the other advocate is competent to handle the matter.

Disputes over Fees

[6] Advocates and clients should attempt to resolve disputes over fees amicably before resorting to legal remedies or alternative dispute resolution.

Rule 1.6 Confidentiality of Information

(a) An advocate shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b), (c), (d) or Rule 3.3(a).

(b) An advocate shall reveal such information to the extent the advocate reasonably believes necessary to prevent the client from committing a criminal act that the advocate believes is likely to result in death or substantial bodily harm.

(c) An advocate may reveal intention of the advocate's client to commit a crime and the information necessary to prevent the crime.

(d) An advocate may reveal information relating to the representation of a client to the extent the advocate reasonably believes necessary:

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

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the advocate's services;

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

(4) to secure legal advice about the advocate's compliance with these Rules;

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

(6) to comply with other law or a Court order;

(7) to detect and resolve conflicts of interest arising from the advocate's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the advocate-client privilege or otherwise prejudice the client; or

(8) to respond to questions from the Court related to a client's unavailability or failure to communicate with the advocate, with the objective of providing candid and relevant information to the Community Court without unduly prejudicing the client's rights or interests.

(e) An advocate shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Rule 1.6 Confidentiality of Information - Comment

[1] Paragraph (a) establishes an advocate's broad duty to maintain and protect client confidences. Subsections (b) – (d) establish narrow exceptions to the duty of confidentiality. Advocates discuss client confidences in a way that might allow a third party to ascertain information about the client or case. An advocate may use hypotheticals to discuss specific legal issues, as long as the examples do not reveal their client's identity or their case.

Authorized Disclosure

[2] An advocate may discuss information about a client's case when the client has authorized disclosure directly or by implication. Client authority may be implied if disclosure is necessary to carry out the client's objectives for the representation. For example, an advocate may be allowed to admit a fact that would be hard to dispute or admit a fact in order to satisfactorily resolve the case. Advocates that work together in a firm may talk about a client's case unless the client has told the advocate that they may not share case information with coworkers. Keeping client and case information private also applies to advocates who represent the government.

The requirement of maintaining confidentiality of information relating to representation applies to government advocates who may disagree with the policy goals that their representation is designed to advance.

Subsection (d)(6) permits an advocate to disclose information to authorities which the advocate learns during the course of representation, concerning the exploitation or abuse of an elderly or vulnerable person or child, when required to do so under Community law, even if the client does not want the advocate to report the information.

Acting Competently to Preserve Confidentiality

[3] An advocate must keep all client and case information, including information stored in electronic form, provided the advocate has reasonable safeguards in place to prevent the information from being released accidentally or without permission. This duty includes making sure persons who work for and with the advocate understand that client information is private, and reasonable efforts are taken under the circumstances to prevent access or disclosure.

[4] An advocate must be careful with client information when transmitting a communication to others and make sure that only the intended person receives the information. This responsibility does not mean an advocate must use special security measures when the method of communication affords a reasonable expectation of privacy. Whether the advocate sent the information by

properly secured means can be decided by the circumstances, including the advocate's actions and whether the law or an agreement might have provided greater protection.

[5] The duty of confidentiality continues after the client-advocate relationship has terminated. See Rule 1.9 (c)(2).

Rule 1.7 Conflict of Interest: Current Clients: General

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

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

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

(b) Notwithstanding the existence of a conflict of interest under paragraph (a), an advocate may represent a client if each affected client gives informed written consent and each of the following conditions are met:

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

(2) the representation is not prohibited by Community law; and

(3) the representation does not involve the assertion of a claim by one of the advocate's clients against another client represented by the advocate, either in the same litigation or other proceeding in any court or jurisdiction.

Rule 1.7 Conflict of Interest: Current Clients: General - Comment

General Principles

[1[Loyalty and independent judgment are essential in an advocate's relationship with a client. Concurrent conflicts of interest may arise from an advocate's responsibilities to 1) another client; 2) a former client; 3) a third person; or 4) the advocate's own interests.

[2] To understand whether an advocate has a conflict of interest problem under this Rule, and if so, what steps to take, the advocate should: 1) identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict; and 4) if the representation may be undertaken, consult with the clients affected and obtain their informed written consents. If a conflict exists that cannot be waived, or that an affected client declines to waive, the advocate must decline the representation or withdraw from an existing representation.

Identifying Conflicts of Interest: Directly Adverse

[3] Although directly adverse conflicts arise most frequently in litigation, they also arise in transactional matters. For example, if an advocate is asked to represent a seller in negotiations with a buyer represented by the advocate, not in the same transaction but in another, unrelated matter, the advocate could not undertake the matter without informed consent.

Conflict questions may arise in estate planning and estate administration. For example, an advocate may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present.

In estate administration, the client is the person seeking the advocate's services. The client is not the estate, trust or beneficiaries. In order to comply with conflict of interest rules, the advocate should make clear the advocate's relationship to the parties involved. In litigation, factors that an advocate should consider in determining whether the clients need to be advised of an actual or potential conflict include, but are not necessarily limited to, the following: jurisdiction, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved, and the clients' reasonable expectations in retaining the advocate. If there is significant risk of material limitation, then absent informed consent of the affected clients, an advocate should refuse one of the representations or withdraw from one or both matters.

One example of a directly adverse conflict in litigation is an advocate representing different clients charged separately related to the same alleged criminal offense. This could require the advocate to cross-examine Client A, who appears as a witness in a case involving Client B when the testimony could be damaging to Client A.

Personal Interest Conflicts

[4] When advocates representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there is a significant risk that client confidences will be revealed and that the advocates' family relationships will interfere with independent professional judgment. Thus, related advocates (e.g., as parent, child, sibling or spouse) ordinarily may not represent opposing clients, unless each client gives informed written consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the advocates are associated.

Prohibited Representations

[6] Ordinarily, clients may consent to representation notwithstanding a conflict. As indicated in paragraph (b), however, some conflicts are non-consentable, meaning that the advocate involved may not ask for such agreement or provide representation on the basis of the client's consent. When the advocate represents more than one client, the question of consentability must be resolved as to each client.

[7] Consentability is typically determined by considering whether the client's interests will be adequately protected if they are permitted to give their informed consent. Under paragraph (b)(1), representation is prohibited if the advocate cannot reasonably conclude that competent and diligent representation of both clients is impossible under the circumstances.

[8] Paragraph (b)(2) describes conflicts that are non-consentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although (b)(2) does not preclude an advocate's representation of adverse parties in a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(l)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[9] Informed consent requires that each affected client be aware of the relevant circumstances of the conflict, and of reasonably foreseeable effects the conflict may have on the interests of that client, including loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Rule 1.0(e).

[10] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent- for example, when the advocate represents different clients in related matters and Client A refuses to consent to the disclosure necessary to permit Client B to make an informed decision. In these cases, the advocate cannot properly ask Client B to consent. See Rule 1.6.

Consent Confirmed in Writing

[11] Paragraph (b) requires the advocate to obtain the informed consent of the client, confirmed in writing. Such writing must be executed by the client, or promptly recorded and transmitted to the client following an oral consent, within a reasonable time following the client's consent. The requirement of a writing does not replace the need for the advocate to talk with the client, to explain the risks and advantages - as well as reasonably available alternatives - and to afford the client a reasonable opportunity to discuss options, questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or uncertainty that might later occur.

Revoking Consent

[12] A client who has given consent to a conflict may revoke the consent at any time and by doing so would terminate the advocate's representation.

Consent to Future Conflict

[13] Whether an advocate may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. A more comprehensive explanation of the types of future representations that might arise - and the actual and reasonably foreseeable adverse consequences - may result in a greater likelihood that the client will have the requisite understanding and that the future conflict waiver will be enforceable.

Special Considerations in Common Representation

[14] With regard to the attorney-client privilege, the prevailing rule is, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation arises between the clients, the privilege will not protect any such communications, and the clients should be so advised before they consent to common representation.

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

Organizational Clients

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

[17] An advocate for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The advocate may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the advocate's resignation from the board and the possibility of the corporation's obtaining legal advice from another advocate in such situations. If there is material risk that the dual role will compromise the advocate's independence of professional

judgment, the advocate should not serve in both capacities when conflicts of interest arise. The advocate should advise other members of the board that in some circumstances, matters discussed at board meetings while the advocate is present in the capacity of director might not be protected by the attorney-client privilege and that conflict-of-interest considerations might require the advocate's recusal as a director or might require the advocate and the advocate's firm to decline representation of the corporation in a matter.

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

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

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

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

(3) the client gives written informed consent to the essential terms of the transaction and the advocate's role in the transaction, including whether the advocate is representing the client in the transaction.

(b) An advocate shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as defined in Rule 1.8 Comment [4].

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

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

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

(1) an advocate may advance Court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) an advocate representing an indigent client may pay Court costs and expenses of litigation on behalf of the client.

(e) An advocate shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed written consent;

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

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

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

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

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

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

(h) An advocate shall not:

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

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

(3) make an agreement prospectively limiting the client's right to report the advocate to appropriate professional authorities.

(i) An advocate shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-advocate relationship commenced.

(j) While advocates are associated in a firm, a prohibition in paragraphs (a) through (h) above that applies to any one of them shall apply to all of them.

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules - Comment

Business Transactions between Client and Advocate

[1] Business transactions with clients governed by subsection (a) include those closely related to the subject matter of the representation, for example, when an advocate drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule also applies to advocates purchasing property from estates they represent and when the advocate accepts an interest in the client's business or other non-monetary property as payment of all or part of a fee.

Use of Information Related to Representation

[2] An advocate shall not use information relating to the representation to the disadvantage of the client as this violates the advocate's duty of loyalty, except as such may apply to the following statement: An advocate does not violate this duty of loyalty when she/he capitalizes on business opportunities made known to him/her during the course of representation if after written disclosure, the client elects to forego the opportunity. The underlying reasoning is that the opportunity cost to a client, or their best foregone alternative, is not to be construed as a disadvantage.

Gifts to Advocates

[3] An advocate may not suggest or accept that a substantial gift be made, for the advocate's benefit, except when the advocate is related to the client as set forth in the Rule. This Rule is not intended to be construed as prohibiting acceptance, within the bounds of good taste, of social amenities consistent with generally prevailing customs. Such gifts may include, among others, presents given at a holiday or as a token of appreciation.

[6] If the gift requires preparing a legal instrument such as a will or conveyance, the client should have the independent advice of another advocate before gifting or conveying. The sole exception to this Rule is where the client is a relative of the advocate receiving the gift.

Financial Assistance

[7] Advocates may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives advocates too great a financial stake in the litigation.

Person Paying for an Advocate's Services

[8] Advocates are frequently asked to represent a client under circumstances in which a third person will compensate the advocate, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, advocates are prohibited from accepting or continuing such representations unless the advocate determines that there will be no interference with the advocate's independent professional judgment and there is informed written consent from the client. See also Rule 5.4 (c).

Limiting Liability and Settling Claims

[9] Agreements prospectively limiting an advocate's liability for malpractice, whether made at the outset of the representation or at any time when the client is unaware of a claim or potential claim, are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the advocate seeking the agreement. This paragraph does not prohibit an agreement in accordance with Rule 1.2 that defines the scope of representation, although a definition of scope that makes the obligations of representation misleading may be deemed an attempt to limit liability.

[10] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, the Rule requires that the advocate must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement and give the client or former client a reasonable opportunity to find and consult independent counsel.

Rule 1.9 Duties to Former Clients

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

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

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

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

unless the former client gives informed consent, confirmed in writing.

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

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

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

Rule 1.9 Duties to Former Clients - Comment

[1] After termination of a client-advocate relationship, an advocate has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule.

[2] The scope of the "matter" for purposes of this Rule may depend on the facts of a particular situation or transaction. The advocate's involvement in a matter can also be a question of degree. For example, an advocate who repeatedly handled a type of problem for a former client may not be precluded from later representing another client in a factually distinct problem of that type, even though the subsequent representation involves a position adverse to the prior client.

[2] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, an advocate who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce.

Advocates Moving Between Firms and/or Departments

[3] When advocates have been associated within a department and/or firm but then end their association, the question of whether an advocate should undertake representation may involve several competing considerations. The client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. However, the Rule should not be so broadly applied as to preclude other persons from having a reasonable choice of legal counsel. Finally, application of the Rule should not unreasonably hamper advocates from forming new associations and taking on new clients after having left a previous association. Application of paragraph (b) depends on a situation's particular facts, aided by reasonable inferences, deductions or working presumptions about the way in which advocates work together. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

Rule 1.10 Imputation of Conflicts of Interest: General Rule for Advocate with a Firm

(a) While advocates are associated in a firm (not including SRP-MIC departments addressed in Rule 1.11), none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless

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

(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified advocate's association with a prior firm, and

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

(ii) written notice is promptly given to any affected former client to enable the former client to review compliance with the provisions of this Rule, which shall include a description of the screened advocate's prior representation, a statement that that the client's material confidential information has not been disclosed or used in violation of the Rule, a description of the screening procedures employed; a statement of the firm's and of the screened advocates compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened advocate and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

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

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

(2) any advocate remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter. If the only such information is contained in documents or electronically stored information maintained by the firm, and the firm adopts screening procedures that are reasonably adequate to prevent access to such documents or electronically stored information by the remaining advocates, those remaining advocates will not be considered to have protected information within the meaning of this Rule.

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

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

Rule 1.10 Imputation of Conflicts of Interest: General Rule for Advocate with a Firm - Comment

Definition of "Firm"

[1] See Rule 1.0(d).

Principles of Imputed Disqualification

[2] The Rule operates to permit a firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by an advocate who formerly was associated with the firm. The Rule applies regardless of when the formerly associated advocate represented the client. The Rule in paragraph (a) does not prohibit representation by others in the firm where the person prohibited from involvement in a matter is a non-advocate, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the advocate is prohibited from acting because of events before the person became an advocate, for example, work that the person did as a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the non-advocates and the firm have a legal duty to protect.

[3] The notice required by paragraph (a)(2)(ii) is not a request for a waiver. The recipient of such a notice is not empowered to prohibit the representation at issue but is only given an opportunity to question or object to, if appropriate, the means by which a screen is implemented. The notice is intended to enable the former client to evaluate and comment upon the effectiveness of the screening procedures.

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

(a) Except as law may otherwise expressly permit, an advocate who has formerly served as a public officer or employee of the government is subject to Rule 1.9 and shall not otherwise represent a client in connection with a matter in which the advocate participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its written, informed consent to the representation.

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

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

(2) written notice is promptly given to the appropriate SRP-MIC department to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, an advocate having information that the advocate knows is confidential government information about a person may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by Community policy from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the

public. A department or firm with which that advocate is associated may undertake or continue representation in the matter only if the disqualified advocate is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, an advocate currently serving as a public officer or employee is subject to Rules 1.7 and 1.9 and shall not:

(1) participate in a matter in which the advocate participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its written informed consent; or

(2) negotiate for private employment with any person who is involved as a party or as advocate for a party in a matter in which the advocate is participating personally and substantially.

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

[1] An advocate representing an SRP-MIC department or agency, whether employed or specially retained by SRP-MIC is subject to these Rules, including the prohibition against concurrent conflicts of interests stated in Rule 1.7 and the protections afforded former clients in Rule 1.9.

[2] This Rule prohibits an advocate from exploiting public office for the advantage of a private client. It is a counterpart of Rule 1.10(b), which applies to advocates moving from one firm to another. For example, an advocate who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the advocate has left government service, except when authorized to do so by the government agency under paragraph (a).

[3] This Rule represents a balancing of interests. An advocate should not be in a position where benefit to a client might affect performance of the advocate's professional functions on behalf of the government. Likewise, a client should not gain an unfair advantage because of an advocate's access to confidential government information about the client's adversary obtainable only through the advocate's government service. The rules governing advocates presently or formerly employed by a government agency should not be so restrictive, however, as to inhibit transfer of employment to and from the government. The provisions in paragraphs (a), (b), and (d) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

[4] For purposes of paragraph (a)(1) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the advocate should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

[5] An advocate may be subject to the Community Code and policies regarding conflict of interest, which may limit the extent to which the government agency may give consent under this Rule.

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

[7] Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule.

[8] Because of the special problems raised by imputation within an agency, paragraph (d) does not impute the conflicts of an advocate currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such advocates.

[9] Paragraph (c) operates only when the advocate in question has actual knowledge of the information and not with respect to information that merely could be imputed to the advocate.

[10] When an advocate has been employed by one agency and then moves to a second agency, it may be appropriate to treat that second agency as another client for purposes of this Rule.

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

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

(a) Except as stated in paragraph (d), an advocate shall not represent anyone in connection with a matter in which the advocate participated personally and substantially as a judge or other adjudicative officer or law clerk or solicitor to such a person or as an arbitrator, mediator or other third-party neutral.

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

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

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

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified advocate and the new firm that the parties' and tribunal's material confidential information has not been disclosed or used in violation of the Rules; and an

agreement by the new firm to respond promptly to any written inquiries or objections by the parties or the tribunal about the screening procedure; and

(3) the personally disqualified advocate and the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

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

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

[1] This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember Court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the Court, but in which the former judge did not participate. The fact that a former judge exercised administrative responsibility in a Court does not prevent the former judge from acting as an advocate in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and advocates who serve as part-time judges. A part-time judge, judge pro tempore or retired judge recalled to active service, may not act as an advocate in any proceeding in which he or she served as a judge or in any other proceeding related thereto.

Rule 1.13. Organization as Client

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

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

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

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

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

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

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

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, an advocate shall explain the identity of the client when the advocate knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the advocate is dealing.

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

Rule 1.13 Organization as Client – Comment

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders, and other constituents. Officers, directors, employees, and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees, and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's advocate in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its advocate to investigate allegations of wrongdoing, interviews made in the course of that investigation between the advocate and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the advocate. The advocate may not

disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the advocate even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the advocate's province. Paragraph (b) makes clear, however, that when the advocate knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the advocate must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(f), knowledge can be inferred from circumstances, and an advocate cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the advocate should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the advocate to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the advocate's advice, the advocate may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the advocate's advice, it will be necessary for the advocate to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the advocate has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation outside the organization. Even in circumstances where an advocate is not obligated by Rule 1.13 to proceed, an advocate may bring to the attention of an organizational client, including its highest authority, matters that the advocate reasonably believes to be of sufficient importance to warrant doing so in the best interests of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the advocate must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the advocate's responsibility under Rules 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(d) by providing an additional basis upon which the advocate may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(d)(1)-(5). Under paragraph (c) the advocate may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the advocate reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the advocate's services be used in furtherance of the violation, but it is required that the matter be related to the advocate's representation of the organization. If the advocate's services are being used by an organization to further a crime or fraud by the organization. Rules 1.6(d)(1) and 1.6(d)(2) may permit the advocate to disclose confidential information. In such circumstances Rule 1.2(d) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of an advocate to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to an advocate's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] An advocate who reasonably believes that he or she has been discharged because of the advocate's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the advocate to take action under either of these paragraphs, must proceed as the advocate reasonably believes necessary to assure that the organization's highest authority is informed of the advocate's discharge or withdrawal.

Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of advocates may be more difficult in the government context. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part, or the relevant branch of government, may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government advocate may have authority to question such conduct more extensively than that of an advocate for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of advocates employed by the government may be defined by statutes and regulation. This Rule does not limit that authority. See Scope. Government advocates also may have authority to represent the "public interest" in circumstances where a private advocate would not be authorized to do so.

[10] A government advocate may have an obligation to render advice to a government entity and constituents of a government entity. Normally, the government entity, rather than an individual constituent, is the client. Some government advocates may also be elected officials or the employees of elected officials who have statutory obligations to take formal action against individual constituents under certain circumstances. The government advocate, therefore, must clearly identify the client and disclose to the individual constituents any limitations that are imposed on the advocate's other legal obligations. See ER 1.2(c) and related comments. Further, where a conflict arises between a constituent and the government entity the advocate represents or between constituents of the same government entity, the advocate must make the identity of the client clear to the constituents and determine which constituent has authority to act for the government entity in each instance.

Clarifying the Advocate's Role

[11] There are times when the organization's interests may be or become adverse to those of one or more of its constituents. In such circumstances the advocate should advise any constituent, whose interest the advocate finds adverse to that of the organization of the conflict or potential conflict of interest, that the advocate cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the advocate for the organization cannot provide legal representation for that constituent individual, and that discussions between the advocate for the organization and the individual may not be privileged.

[12] Whether such a warning should be given by the advocate for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[13] Paragraph (e) recognizes that an advocate for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[14] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[15] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the advocate's client does not alone resolve the issue. Most derivative actions are a normal incident or an organization's affairs, to be defended by the organization's advocate like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the advocate's duty to the organization and the advocate's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

Rule 1.14 Client with Diminished Capacity

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

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

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

Rule 1.14 Client with Diminished Capacity - Comment

[1] When the client is a minor or suffers from a diminished mental capacity, maintaining the ordinary client-advocate relationship may not be possible in all respects. In particular, a severely incapacitated person may have limited or no ability legally binding decisions. Other times, a client

with diminished capacity may have the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, may have opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the advocate's obligation to treat the client with attention, respect and maintain communication.

[3] The client may wish to have family members, legal representatives or other persons participate in discussions with the advocate. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the advocate-client evidentiary privilege. Nevertheless, the advocate must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] In matters involving a minor, whether the advocate should look to the parents as natural guardians may depend on the type of proceeding or matter in which the advocate is representing the minor. If the advocate represents the guardian as distinct from the ward and is aware that the guardian is acting adversely to the ward's interest, the advocate may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

[5] In matters involving diminished capacity, competency, and vulnerability, where reasonably necessary protective action is taken by the advocate, the advocate may continue to represent the client in separate proceedings resulting from such protective action, except where such representation is contrary to the client's interest or the advocate-client relationship.

Taking Protective Action

[6] If an advocate reasonably believes that a client is at risk of substantial physical, financial, or other harm unless action is taken, and that a normal client-advocate relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the advocate to take protective measures deemed necessary. This option relates to the advocate's reasoned professional belief as to the client's capacity. It does not relate to the advocate's mere disagreement with the client's objectives if the client has capacity to express such objectives upon understanding the relevant facts and circumstances.

(7) Protective actions may include, without limitation, consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult- or child-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the advocate should be

guided by such factors as the wishes, values, and customs and traditions of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[8] In determining the extent of the client's diminished capacity, the advocate should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term objectives, commitments, and values of the client. In appropriate circumstances, the advocate may seek guidance from a licensed physician or certified psychologist.

[8] If a legal representative has not been appointed, the advocate should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests, balancing these options with the client's interests in maintaining control over the client's decisions and autonomy.

Disclosure of the Client's Condition

[9] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. If the client has not authorized disclosure, the advocate should disclose only when disclosure is deemed necessary, with no reasonably available alternatives. When taking protective action pursuant to paragraph (b), the advocate is impliedly authorized to make the necessary disclosures, even when the client directs the advocate to the contrary; however, such disclosures should be made to the minimum extent necessary to achieve the objective of protecting the client.

Emergency Legal Assistance

[10] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, an advocate may take legal action on behalf of such a person even though the person is unable to establish a client-advocate relationship or to make or express considered judgments about the matter, if a person or another acting in good faith on that person's behalf has consulted with the advocate. Even in such an emergency, however, the advocate should not act unless the advocate reasonably believes that the person has no other advocate, agent or other representative available. The advocate should take legal action on behalf of the person only to the extent reasonably necessary to allay immediate threats of imminent and irreparable harm. An advocate who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the advocate would with respect to a client.

[11] An advocate who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing such confidences only to the extent necessary to accomplish the intended protective action. The advocate should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The advocate should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, an advocate would not seek compensation for such emergency actions taken.

Rule 1.15 Safekeeping Property

(a) An advocate shall hold property of clients or third persons that is in an advocate's possession in connection with a representation separate from the advocate's own property. Funds shall be kept in a separate client trust account maintained in the state where the advocate's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the advocate and shall be preserved for a period of five years after termination of the representation.

(b) An advocate may deposit the advocate's own funds in the client trust account only for the following purposes and only in an amount reasonably estimated to be necessary to fulfill the stated purposes:

> (1) to pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account; or
>
> (2) to pay any merchant fees or credit card transaction fees or to offset debits for credit card chargebacks.
>
> (3) Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the advocate does not use a credit card processing service that permits the advocate to direct such funds to the advocate's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

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

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

(e) When in the course of representation an advocate is in possession of property in which two or more persons (one of whom may be the advocate) claim interests, the property shall be kept separate by the advocate. The advocate shall promptly distribute any portion of the property as to which there are no competing claims. Any other property shall be kept separate until one of the following occurs:

(1) the parties reach an agreement on the distribution of the property; or

(2) a court order resolves the competing claims; or

(3) distribution is allowed under section (f) below.

(f) Where the competing claims are between a client and a third party, the advocate may provide written notice to the third party of the advocate's intent to distribute the property to the client, as follows:

(1) The notice shall be served on the third party in the manner provided under Rule 5-13 of the Salt River Rules of Civil Procedure and must inform the third party that the advocate may distribute the property to the client unless the third party initiates legal action and provides the advocate with written notice of such action within 90 calendar days of the date of service of the advocate's notice.

(2) If the advocate does not receive such written notice from the third party within the 90 calendar day period and provided that the disbursement is not prohibited by law or court order, the advocate may distribute the funds to the client after consulting with the client regarding the advantages and disadvantages of disbursement of the disputed funds and obtaining the client's informed consent to the distribution, confirmed in writing.

(3) If the advocate is notified in writing of an action filed within the 90-calendar day period, the advocate shall continue to hold the property separate unless and until the parties reach an agreement on distribution of the property, or a court resolves the matter.

(4) Nothing in this Rule is intended to alter a third party's substantive rights.

Rule 1.15 Safekeeping Property - Comment

[1] An advocate should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the advocate's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. An advocate should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or Court order.

[2] While normally it is impermissible to commingle the advocate's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that

account. Accurate records must be kept regarding which part of the funds are the advocate's funds.

[3] Advocates often receive funds from which the advocate's fee will be paid. The advocate is not required to remit to the client funds that the advocate reasonably believes represent fees owed. However, an advocate may not hold funds to coerce a client into accepting the advocate's contention. The disputed portion of the funds must be kept in a trust account and the advocate should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] The Rule also recognizes that third parties may have just claims against specific funds or other property in an advocate's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. An advocate may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim has become a matured legal or equitable claim, and unless distribution is otherwise allowed under this Rule, the advocate must refuse to surrender the property to the client until the claims are resolved. In addition to the procedures described in this Rule, when there are substantial grounds for dispute as to the person entitled to the funds, the advocate may file an action to have a court resolve the dispute.

[5] The obligation of an advocate under this Rule are independent of those arising from activity other than rendering legal services. For example, an advocate who serves only as personal representative of an estate or the trustee of a trust is governed by the applicable law relating to fiduciaries even though the advocate does not render legal services in the transaction and is not governed by this Rule.

[6] For purposes of this Rule, "merchant fees" and "credit card transaction fees" are fees that are deducted from the amount of the credit card charge to pay the company that issued the client's credit card, the advocate or the firm's credit card processing service, and the credit card association (e.g., Visa, MasterCard), and related charges. Those fees typically include a percentage of the total amount billed plus a fixed fee, which, unless paid by the advocate or law firm, reduces the amount that can be credited to the client's account. A "chargeback" (or reversal of charges) occurs when a client or former client writes to the credit card company that issued the credit card used to pay an advocate to dispute the amount that should be paid to the advocate or law firm. When a client or former client does so, the advocate's or law firm's account is debited an amount equal to the disputed amount, plus a chargeback fee.

[7] Advocates and firms are permitted, and in some cases may be required, to place their own funds into their trust accounts in very limited circumstances. Advocates and firms that accept payment by credit card for advance fees, costs or expenses must at all times maintain in their trust accounts sufficient funds of their own to pay fees and charges related to operation of the trust account, and to pay all merchant and credit card transaction fees, chargeback fees and related charges. Advocates and firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay trust account and credit card

fees and charges. Advocates and firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts to cover those charges, since no client or third-party funds will be at risk due to debits from the trust account.

[8] Paragraph (f) allows an advocate to distribute funds or property in the advocate's possession after providing notice to third persons known to claim an interest. Notice under paragraph (f) must be sufficient to allow the third person to take appropriate action to protect its interests. Although there is no one form of notice that will be acceptable, the notice should generally include at least the following: (a) a description of the funds or property in the advocate's possession; (b) the name of the client claiming an interest in the funds and other information reasonably available to the advocate that would allow the third person to identify the claim or interest; (c) a mailing address, telephone number, and email address where the third party can provide notice to the advocate of the commencement of an action asserting an interest in the funds or property; and (d) the proposed distribution of the funds or property.

[9] Apart from their ethical considerations, advocates may have legal obligations to safeguard third-party funds under applicable case and the Community Code. The notice provisions of paragraph (f) do not alter an advocate's legal obligations and duties to third persons with respect to funds or property in the advocate's possession. An advocate who proposes to distribute funds under this paragraph should carefully safeguard funds in which third persons claim an interest, which may expose the advocate or client to a risk of civil or other liability even if the notice provisions of paragraph (f) are satisfied.

[10] Before making any distribution of funds or property pursuant to paragraph (f), an advocate should explain to the client that the client may remain responsible to satisfy valid claims of third persons, and that the third person's failure to commence an action within the 90-day period of paragraph (f) will not by itself operate to waive, reduce or extinguish the third person's claims, if any, against the client or the funds or property received by the client. Before making any distribution under paragraph (f), the advocate must obtain the client's informed consent, confirmed in writing, to the distribution.

Rule 1.16 Declining or Terminating Representation

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

(1) the representation will result in violation of these Rules or other law;

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

(3) the advocate is discharged.

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

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

(2) the client insists on undertaking, but has not yet undertaken, a course of action involving the advocate's services that the advocate reasonably believes is criminal or fraudulent;

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

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

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

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

(7) other good cause for withdrawal exists.

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

(d) Upon termination of representation, an advocate shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering original documents and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned. Upon the client's request, the advocate shall provide the client with copies of all the client's documents, and all documents reflecting work performed for the client. The advocate may retain documents reflecting work performed for the client to the extent permitted by other law only if retaining them would not prejudice the client's rights.

Rule 1.16 Declining or Terminating Representation - Comment

[1] Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. If an advocate's scope of representation is limited to a specific matter, the relationship ends when the matter has been resolved and the relationship has been terminated. See Rule 1.15. When an advocate handles a matter that produces a result adverse to the client and the advocate and client have not previously agreed that the advocate will handle the matter on appeal, the advocate must discuss the possibility of appeal with the client, including advising the client in writing of time limitations for an appeal, before ending the representation. If the advocate agreed to handle the appeal when stating to the client the scope of representation, then the advocate should continue the representation for the appeal.

Mandatory Withdrawal

[2] When an advocate has been appointed to represent a client, withdrawal ordinarily requires approval of the court. Similarly, court approval or notice to the court is often required by applicable law before an advocate withdraws from pending litigation if the advocate has entered an appearance in the matter on behalf of the client. Difficulty may be encountered if withdrawal is based on the client's demand that the advocate engage in unprofessional conduct. Though the court may request an explanation for the withdrawal, the advocate may be bound to keep confidential the facts that would constitute such an explanation. The advocate's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

Discharge

[3] A client has a right to discharge an advocate at any time, with or without cause, subject to the client's liability for payment for an advocate's services.

[4] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to discharge appointed counsel should be given a full explanation of the consequences of such an action. These consequences may include a decision by the appointing or referring authority that new counsel is unjustified or that new counsel would be at the client's expense or that the client could represent himself/herself.

[5] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the advocate, and in any event the discharge may be seriously adverse to the client's interests. The advocate should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Assisting the Client Upon Withdrawal

[6] Ordinarily, at the close of representation, the client is entitled to the following documents (without limitation): pleadings, legal documents, evidence, discovery, legal research, work product, transcripts, correspondence, drafts, but not internal practice management memoranda. Advocates should inform a client if the advocate retained original instruments, such as wills. Document retention policies should be disclosed to the client, preferably in writing and at the beginning of the relationship. An advocate shall not charge a client for the cost of copying any documents unless the client already has received one copy of them. The advocate may deliver documents electronically to which the client is entitled, provided the electronic format is of common use and the client can access the documents without expense to the client.

[7] Even if the client has discharged the advocate, the advocate must take all reasonable steps to avoid prejudice to the rights of the client.

Rule 1.17 Sale of Law Practice

RESERVED.

Rule 1.18 Duties to Prospective Client

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

(b) Even when no client-advocate relationship is formed, an advocate who has had discussions with a prospective client shall not use or reveal information learned in those discussions, except as would be permitted by these Rules with respect to information of a former client.

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

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

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

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

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

(ii) written notice is promptly given to the prospective client, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified advocate and the new firm that the prospective client's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the prospective client about the screening procedure; and

(iii) the personally disqualified advocate and the partners of the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

Rule 1.18 Duties to Prospective Client - Comment

[1] Prospective clients receive some of the protection afforded clients, but not all, due to the fact that a prospective client reveals information to the advocate during the initial consultation prior to formation of a client-advocate relationship. However, a person who communicates information unilaterally to an advocate, without any reasonable expectation that the advocate is willing to discuss the possibility of forming a client-advocate relationship, is not considered a "prospective client."

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

[3] An advocate may condition conversations with a prospective client on the person's informed written consent that no information disclosed during the consultation will prohibit the advocate from representing a different client in the matter. If the agreement expressly so provides, the prospective client may also consent to the advocate's subsequent use of information received from the prospective client. Even in the absence of an agreement under paragraph (c), the advocate is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the advocate has received from the prospective client information that could be significantly harmful if used against the prospective client in the matter.

[4] Under paragraph (c), the prohibition in this Rule is imputed to other advocates as provided in Rule 1.10, but, under paragraph (d), imputation may be avoided if the advocate obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if all disqualified advocates are timely screened and written notice is promptly given to the prospective client. Paragraph (d)(1) does not prohibit the screened advocate from receiving a salary or partnership share established by prior independent agreement, but the advocate may not receive compensation directly related to the matter in which the advocate is disqualified.

[5] Notice, including a general description of the subject matter about which the advocate was consulted, and of the screening procedures employed, generally should be documented as soon as practicable after the need for screening becomes apparent.

Counselor

Rule 2.1 Advisor

In representing a client, an advocate shall exercise independent professional judgment and provide candid advice. When providing advice, an advocate may refer not only to law but to other considerations that may be relevant to the client's situation, including cultural considerations.

Rule 2.1 Advisor – Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the advocate's honest assessment, even if the client decides on the client's lawful objectives. An advocate should not be deterred from giving candid advice by the prospect that the advice will be unpleasant to the client.

[2] Although advice consisting of legal considerations usually are of value to a client, an advocate should not hesitate to also advise a client about practical considerations with a client, such as cost or effects on other people. A client may expressly or impliedly ask an advocate for purely technical advice. When such a request is made by a client experienced in legal matters, an advocate may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the advocate's responsibility as advisor may include indicating that factors other than strictly legal considerations may be involved.

[3] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. If consultation with a professional in another field reasonably would assist a client in the client's decision making, the advocate should make such a recommendation. At the same time, an advocate's advice may consist of recommending a course of action in the face of conflicting expert recommendations.

Offering Advice

[4] An advocate ordinarily has no duty to give advice that the client has indicated is unwanted, but an advocate may initiate advice to a client when doing so appears to be in the client's interest. For example, when an advocate knows that a client proposes a course of action that appears likely to result in substantial adverse legal consequences to the client, Rule 1.4 may require that the advocate offer advice if the client's proposed course of action is related to the representation. Similarly, when a matter is likely to involve litigation, Rule 1.4 may require the advocate to inform the client of the costs of potential litigation and of forms of dispute resolution that might constitute reasonable alternatives to litigation.

Rule 2.2

RESERVED.

Rule 2.3 Evaluation for Use by Third Persons

(a) An advocate may provide an evaluation of a matter affecting a client for the use of a third party if the advocate reasonably believes that creation and provision of the evaluation is compatible with other aspects of the advocate's relationship with the client.

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

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

Rule 2.3 Evaluation for Use by Third Persons - Comment

Definition

[1] An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 1.2.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the advocate does not have a client-advocate relationship. For example, an advocate retained by a purchaser to analyze a vendor's title to property does not have a client-advocate relationship with the vendor. The question concerns whether the advocate is retained by the person whose affairs are being examined. When the advocate is retained by such a person, the general rules concerning loyalty to client and preservation of confidences apply. Such rules do not apply if the advocate is retained by someone else. For this reason, it is essential to identify the person by whom the advocate is retained. This should be made clear not only to the person under examination, but also to any others to whom the results are to be made available.

[3] Advocates for the government may be called upon to give a formal opinion on the legality of contemplated government agency action. In making such an evaluation, the government advocate acts at the behest of the government as the client, but for purpose of establishing the limits of the agency's authorized activity. Such an opinion is to be distinguished from confidential legal advice given agency officials. The critical question is whether the opinion is to be made public.

Duties Owed to Third Person and Client

[4] When an advocates' evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. The advocate should advise the client of the implications of the evaluation, particularly the advocate's actual or potential responsibilities to third persons. The advocate must also be satisfied as a matter

of professional judgment that making the evaluation is compatible with other functions undertaken on behalf of the client.

Access to and Disclosure of Information

[5] Information relating to an evaluation is protected by Rule 1.6. Before undertaking an evaluation, an advocate should consult with the client and discuss whether material disadvantages could occur if the advocate discloses confidential information through the evaluation and obtain the client's informed consent to disclosures. See Rules 1.6 and 1.0(e). Whether an advocate can undertake an evaluation might depend on whether the client consents to such disclosures, as the quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily an advocate should have whatever latitude of investigation seems necessary as a matter of professional judgment.

Financial Auditors' Request for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the client's advocate, the advocate's response may be made in accordance with procedures such as that set forth in the American Bar Association Statement of Policy Regarding [Advocates'] Responses to Auditors' Requests for Information, adopted in 1975.

Rule 2.4 Advocate Serving as Third-Party Neutral

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

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

Rule 2.4 Advocate Serving as Third-Party Neutral - Comment

[1] A third-party neutral is a person, such as a mediator, arbitrator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

[2] In performing this role, the advocate may be subject to court rules or other law that apply either to third-party neutrals generally or to advocates serving as third-party neutrals. Advocates serving as third-party neutrals may also be subject to various codes of ethics as applicable by their licensing jurisdiction. An advocate who serves as a third-party neutral subsequently may be asked to serve as an advocate representing a client in the same matter. In such scenarios, the advocate should comply with Rule 1.12.

Advocate

Rule 3.1 Meritorious Claims and Contentions

An advocate shall not bring or continue an action, conduct a defense, assert a position in litigation, or take an appeal, without a good faith basis in law and fact for doing so that is not frivolous. An advocate shall not present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith and nonfrivolous argument for an extension, modification, or reversal of existing law. An advocate for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.

Rule 3.1 Meritorious Claims and Contentions - Comment

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account should be taken of the law's ambiguities and potential for change.

[2] An action is frivolous if the advocate is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law. The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the advocate expects to develop vital evidence only by discovery. What is required of advocates, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine whether they can make good faith nonfrivolous arguments in support of their clients' positions. An action is not frivolous if the advocate believes that the client's position ultimately may not prevail.

[3] The advocate's obligations under this Rule are subordinate to Tribal or Federal constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

Rule 3.2 Expediting Litigation

An advocate shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.2 Expediting Litigation - Comment

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when an advocate may properly seek a postponement for personal reasons, it is not proper for an advocate to routinely fail to expedite litigation solely for the convenience of the

advocate. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent advocate acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Rule 3.3 Candor Toward the Tribunal

(a) An advocate shall not knowingly:

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

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

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

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

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

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

Rule 3.3 Candor Toward the Tribunal - Comment

[1] This Rule governs the knowing or intentional conduct of an advocate who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the advocate is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition.

[2] This Rule sets forth the special duties of advocates as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. An advocate acting as an advocate in an

adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although an advocate in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the advocate must not allow the tribunal to be misled by false statements of law or fact or evidence that the advocate knows to be false.

Representations by an Advocate

[3] An advocate is responsible for pleadings and other documents prepared for litigation but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the advocate. Compare Rule 3.1. However, an assertion purporting to be on the advocate's own knowledge, as in an affidavit by the advocate or in a statement in open court, may properly be made only when the advocate knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation.

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. An advocate is not required to make a disinterested exposition of the law but must recognize the existence of pertinent legal authorities.

Offering Evidence

[5] An advocate does not violate this Rule if the advocate offers the evidence for the purpose of establishing its falsity.

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

[7] The duties stated in paragraphs (a) and (b) apply to all advocates, including defense counsel in criminal cases.

[8] The prohibition against offering false evidence only applies if the advocate knows that the evidence is false. An advocate's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. An advocate's knowledge that evidence is false, however, can be inferred from the circumstances.

Remedial Measures

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

Duration of Obligation

[10] A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[11] In any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The advocate for the represented party has the correlative duty to make disclosures of material facts known to the advocate and that the advocate reasonably believes are necessary to an informed decision.

Rule 3.4 Fairness to Opposing Party and Counsel

An advocate shall not:

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

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer a bribe or incentive to a witness that is prohibited by law;

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

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

(e) in trial, allude to any matter that the advocate does not reasonably believe is relevant or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness.

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

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

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

Rule 3.4 Fairness to Opposing Party and Counsel - Comment

[1] The procedure of the adversarial system contemplates that the evidence in a case is to be organized fairly by the opposing parties. Fair competition in the adversarial system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed, or destroyed. For example, destroying material for purposes of impairing its availability in a pending proceeding or one whose commencement can be foreseen is a violation of this Rule. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including electronically stored information.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. It is improper to pay a witness any fee for testifying. It is improper to pay an expert witness a contingency fee.

[4] Paragraph (f) permits an advocate to advise a client's employees to refrain from giving information to another party because the employees may identify their interests with those of the client.

Rule 3.5 Impartiality and Decorum of the Tribunal

An advocate shall not:

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

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

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

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

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

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

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

Rule 3.5 Impartiality and Decorum of the Tribunal - Comment

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

[2] The advocate's function is to present evidence and argument so that the cause may be decided according to law. An advocate may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar behavior by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by hostility or theatrics.

Rule 3.6 Trial Publicity

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

(b) Notwithstanding paragraph (a), and subject to Rule 1.6, an advocate may state:

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

(2) information contained in a public record;

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

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

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

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

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

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

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

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

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

(c) Notwithstanding paragraph (a), an advocate may make a statement that a reasonable advocate would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the advocate or the advocate's client. A statement made pursuant to this paragraph shall be subject to Rule 1.6 and limited to such information as is necessary to mitigate the recent adverse publicity.

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

[1] Certain proceedings may be subject to special laws, rules or court orders governing confidentiality, such as juvenile, family law and mental health proceeding. The Rule applies only to advocate(s) who are, or who have been involved in the investigation or litigation of a case, and their associates.

[2] There are certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(a) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(b) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(c) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(d) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(e) information that the advocate knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(f) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation, and that the defendant is presumed innocent until and unless proven guilty.

[3] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to out of court speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[4] Finally, out of court statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's advocate, or third persons, where a reasonable advocate would believe a public response is required in order to avoid prejudice to the advocate's client. When prejudicial statements have been publicly made by others, responsive statements may have the effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

Rule 3.7 Advocate as Witness

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

(1) the testimony relates to an uncontested issue;

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

(3) disqualification of the advocate would result in substantial hardship on the client.

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

Rule 3.7 Advocate as Witness - Comment

[1] Application of this Rule can be subject to direction or limitations imposed by the tribunal.

[2] This Rule is not intended to impede or alter the role of a Guardian Ad Litem.

[3] Combining the roles of legal counsel and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the advocate and client.

Advocate-Witness Rule

[4] The tribunal has proper objection when the trier of fact may be confused or misled by an advocate serving as both counsel and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to

testify on the basis of personal knowledge, while counsel is expected to explain and comment on evidence given by others.

[5] To determine whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance, substance, and tone of the advocate's testimony, whether one or both parties could reasonably foresee that the advocate would probably be a witness; and the probability that the advocate's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the advocate should be disqualified, due regard must be given to the effect of disqualification on the client.

Conflict of Interest

[6] If there is likely to be substantial conflict between the testimony of the client and that of the advocate, then the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the advocate might not be prohibited by paragraph (a) from simultaneously serving as counsel and witness because the advocate's disqualification would result in a substantial hardship on the client. If there is a conflict of interest, the advocate must secure the client's written, informed consent.

Rule 3.8 Special Responsibilities of A Prosecutor

The prosecutor in a criminal case shall:

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

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

(c) not seek to obtain a waiver of important pretrial rights from an unrepresented accused individual unless authorized by law.

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena an advocate in a criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

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

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

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

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

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to the court in which the defendant was convicted and to the corresponding prosecutorial authority, and to defendant's counsel or, if defendant is not represented, the defendant and the indigent defense appointing authority in the jurisdiction, and

(2) if the judgment of conviction was entered by a court in which the prosecutor exercises prosecutorial authority, make reasonable efforts to inquire into the matter or to refer the matter to the appropriate law enforcement or prosecutorial agency for its investigation into the matter.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

(i) A prosecutor who concludes in good faith that information is not subject to subsections (g) or (h) of this Rule does not violate those subsections even if this conclusion is later determined to have been incorrect.

Rule 3.8 Special Responsibilities of A Prosecutor - Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is afforded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons. Competent representation of the Community may require a prosecutor to undertake some procedural and remedial measures. Knowing disregard of these requirements or systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

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

[3] Paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper out-of-court statements, even when such

persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[4] Under paragraph (h), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court refer an unrepresented indigent defendant to counsel and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[5] A prosecutor's independent judgment, made in good faith that the new evidence is not of such nature as to trigger the obligations of sections (g) and (h), though subsequently determined to have been incorrect, does not constitute a violation of this Rule.

[6] Evidence is considered new when it was unknown to a trial prosecutor at the time the conviction was entered or, if known to the prosecutor(s), was not disclosed to the defense, either deliberately or inadvertently.

Rule 3.9 Advocate in Other Proceedings

An advocate representing a client before the Tribal Council or in an administrative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

Rule 3.9 Advocate in Other Proceedings - Comment

[1] In representation before bodies such as the Tribal Council, and in administrative proceedings when such bodies are acting in a rule-making or policy-making capacity, advocates present facts, formulate issues and advance argument in the matters under consideration. The decision-making body should be able to rely on the integrity of the submissions made to it. An advocate appearing before such a body must deal with the body honestly and in conformity with applicable rules.

[2] This Rule only applies when an advocate represents a client in connection with an official hearing or meeting at which the advocate or the client is presenting evidence or argument.

[3] This Rule does not apply to an advocate representing the Tribal government.

Rule 3.10 Credible and Material Exculpatory Information about a Convicted Person

(a) When an advocate knows of credible and material evidence that creates a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the advocate shall promptly disclose that evidence to the court in which the defendant was convicted and to the corresponding prosecutorial authority, and to defendant's counsel or, if defendant is not represented, the defendant and the indigent defense appointing authority in the jurisdiction.

(b) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or other law.

(c) An advocate who in good faith concludes that information is not subject to this Rule does not violate this Rule even if that conclusion is later determined to have been erroneous.

(d) This Rule does not require disclosure if the advocate knows that appropriate governmental authorities or the convicted defendant already possess the information.

Rule 3.10 Credible and Material Exculpatory Information about a Convicted Person – Comment

Rectifying the conviction and preventing the incarceration of an innocent person are core values of the judicial system and matters of vital concern to the legal profession. Because of the importance of these principles, this Rule applies to all advocates, except prosecutors, whose special duties with respect to disclosure of new, credible, and material exculpatory evidence after conviction are set forth in Rule 3.8 (g)(h) and (i).

Transactions with Persons Other Than Clients

Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client, an advocate shall not knowingly:

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

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

Rule 4.1 Truthfulness In Statements To Others - Comment

Misrepresentation

[1] An advocate is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the advocate incorporates or affirms a statement of another person that the advocate knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted principles in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

Crime or Fraud by Client

[3] Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, an advocate can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the advocate to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation, or the like. In extreme cases, substantive law may require an advocate to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the advocate can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the advocate is required to do so, unless the disclosure is prohibited under Rule 1.6.

Rule 4.2 Communication with Person Represented by Counsel

In representing a client, an advocate shall not communicate about the subject of the representation with a person the advocate knows to be represented by another advocate in the matter, unless the advocate has the consent of the other advocate or is authorized to do so by law or a court order.

Rule 4.2 Communication with Person Represented by Counsel - Comment

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by an advocate in a matter against possible overreaching by other advocates who are participating in the matter, interference by those advocates with the client-advocate relationship and the un-counseled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. An advocate must immediately terminate communication with a person if, after commencing communication, the advocate learns that the person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a Community agency and a private party, or between two organizations, does not prohibit an advocate from communicating with non-advocate representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from an advocate who is not otherwise representing a client in the matter. An advocate may not make a communication prohibited by this Rule through the acts of another. Parties to a matter may communicate directly with each other, and an advocate is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, an advocate having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[5] Communications authorized by law may include communications by an advocate on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of an advocate representing Community entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, an advocate must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a Tribal or Federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] An advocate who is uncertain whether a communication with a represented person is permissible may seek a court order. An advocate may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's advocate concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's advocate is not required for communication with a former constituent. If a constituent of the organization

is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule.

[8] The prohibition on communications with a represented person only applies in circumstances where the advocate knows that the person is in fact represented in the matter to be discussed. This means that the advocate has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. Thus, the advocate cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In the event the person with whom the advocate communicates is not known to be represented by counsel in the matter, the advocate's communications are subject to Rule 4.3.

Rule 4.3 Dealing with Unrepresented Person

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

Rule 4.3 Dealing with Unrepresented Person - Comment

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that an advocate is unbiased by loyalties or is a neutral authority on the law even when the advocate represents a client. In order to avoid a misunderstanding, an advocate will typically need to identify the advocate's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person.

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the advocate's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the advocate will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether an advocate is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit an advocate from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the advocate has explained that the advocate represents an adverse party and is not representing the person, the advocate may inform the person of the terms on which the advocate's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the advocate's own view of the meaning of the document or the advocate's view of the underlying legal obligations.

Rule 4.4 Respect for Rights of Third Persons

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

(b) An advocate who receives a document or electronically stored information relating to the representation of the advocate's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender and preserve the status quo for a reasonable period of time in order to permit the sender to take protective measures.

Rule 4.4 Respect for Rights of Third Persons - Comment

[1] Responsibility to a client requires an advocate to subordinate the interests of others to those of the client, but that responsibility does not imply that an advocate may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-advocate relationship.

[2] Paragraph (b) recognizes that advocates sometimes receive documents or electronically stored information that were mistakenly sent or produced by opposing parties or their advocates. If an advocate knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the advocate to promptly notify the sender in order to permit that person to take protective measures. Whether the advocate is required to take additional steps, such as returning the original document or electronically stored information, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of an advocate who receives a document or electronically stored information that the advocate knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document or electronically stored information" includes, in addition to paper documents, e-mail and other forms electronically stored information, including embedded data, or metadata, or other electronic modes of transmission subject to being read or put into readable form.

[3] Some advocates may choose to return a document or delete electronically stored information unread, for example, when the advocate learns before receiving it that it was inadvertently sent. Where an advocate is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the advocate.

SRP-MIC Legal Departments, Advocate Firms, and Associates

Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Advocates

(a) A partner, director or supervisor in an advocate firm, department or organization, and an advocate who individually or together with other advocates possesses comparable managerial authority in a firm, department or organization shall make reasonable efforts to ensure that the firm, department or organization has in effect measures giving reasonable assurance that all advocates in the firm, department or organization conform to the Rules of Professional Conduct.

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

(c) An advocate shall be responsible for another advocate's violation of the Rules of Professional Conduct only if:

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

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

Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Advocates - Comment

[1] Paragraph (a) requires advocates with managerial authority within a firm, department or organization to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all advocates in the firm, department or organization will conform to the Rules of Professional Conduct. Such policies and procedures may or may not be in writing, but they must be clearly communicated to all subordinate advocates. Such policies should include all aspects of compliance with the Rules including, but not limited to, those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced advocates are properly supervised. An advocate with general managerial authority cannot oversee or know about each action of a subordinate advocate. If reasonable policies are in place and have been communicated, an advocate with general managerial authority should only be held responsible for the actions of another advocate if either or both of the conditions of subsection (c) exist.

[2] Paragraph (c) defines the duty of a partner, director, supervisor, or other advocate having comparable managerial authority in a law firm, department or organization, as well as an advocate who has direct supervisory authority over performance of specific legal work by another advocate or personnel. Whether an advocate has supervisory authority in particular circumstances is a question of fact. Partners, directors, supervisors and advocates with comparable authority have at least indirect responsibility for all work being done by the firm, department or organization, while a partner, director or supervisor in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm, department or organization advocates engaged in the matter. Appropriate remedial action by a partner, director or supervisor would depend on the immediacy of that advocate's involvement and the seriousness

of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct once the supervisor has notice of the misconduct. For example, if a supervising advocate knows that a subordinate misrepresented a matter to an opposing party or the tribunal, the supervisor as well as the subordinate has a duty to correct promptly the resulting misrepresentation.

[3] The duties imposed by this Rule on managing and supervising advocates do not alter the personal duty of each advocate in a firm, department or organization to abide by the Rules of Professional Conduct.

Rule 5.2 Responsibilities of a Subordinate Advocate

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

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

Rule 5.2 Responsibilities of a Subordinate Advocate – Comment

[1] Although an advocate is not relieved of responsibility for a violation by the fact that the advocate acted at the direction of a supervisor, that fact may be relevant in determining whether an advocate had the knowledge required to render conduct a violation of the Rules. When an advocate in a supervisor-subordinate relationship encounters a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. If the question can reasonably be answered only one way, then the duty of both advocates is clear, and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily rests in the supervisor, and a subordinate may be guided accordingly.

Rule 5.3 Responsibilities Regarding Non-Advocate Assistants

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

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

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

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

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

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

Rule 5.3 Responsibilities Regarding Non-Advocate Assistance - Comment

[1] Advocates generally employ assistants in their practice, including legal administrative assistants, secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the advocate in rendition of the advocate's professional services. An advocate must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment. Such instructions may or may not be in writing, but they must be clearly communicated to all non-advocate assistants. Instructions should include all aspects of these Rules, including but not limited to, the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising non-advocates should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires advocates with managerial authority within a law firm, department or organization to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that non-advocates in the firm and/or department will act in a way compatible with the Rules of Professional Conduct. An advocate with general managerial authority cannot oversee or know about each action of a non-advocate assistant. If reasonable measures are in place and have been communicated, an advocate with general managerial authority should only be held responsible for the actions of a non-advocate assistant if either or both of the conditions of subsection (c) exist.

[3] An advocate may use non-advocates outside the firm, department or organization to assist the advocate in rendering legal services to the client. When using such services, an advocate must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the advocate's professional obligations. When retaining or directing a non-advocate outside the firm, department or organization, an advocate should communicate directions appropriate under the circumstances to give reasonable assurance that the non-advocate's conduct is compatible with the professional obligations of the advocate.

Rule 5.4 Professional Independence of an Advocate

(a) An advocate or law firm shall not share legal fees with a non-advocate, except that:

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

(2) an advocate who purchases the practice of a deceased, disabled, or disappeared advocate may, pursuant to the provisions of Rule 1.16, pay to the estate or other representative of that advocate the agreed-upon purchase price;

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

(4) an advocate may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the advocate in the matter.

(b) An advocate shall not form a partnership with a non-advocate if any of the activities of the partnership consist of the practice of law.

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

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

(1) a non-advocate owns any interest therein, except that a fiduciary representative of the estate of an advocate may hold the stock or interest of the advocate for a reasonable time during administration;

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

(3) a non-advocate has the right to direct or control the professional judgment of an advocate.

Rule 5.5 Unauthorized Practice; Multijurisdictional Practice

(a) An advocate shall not practice law in the SRP-MIC Community Court in violation of the regulation of Community advocates or assist another in doing so.

(b) An advocate who is not admitted to practice in this jurisdiction shall not:

(1) establish an office or other systematic and continuous presence in this jurisdiction for the practice of advocacy, except as authorized by these Rules or other Community law; or

(2) hold out to the public or otherwise represent that the advocate is admitted to practice advocacy in this jurisdiction.

(c) An advocate admitted in another tribal, state, or federal jurisdiction and who is not disbarred, on inactive status or suspended from practice in any jurisdiction, may provide advocacy services on a temporary basis in this jurisdiction if one of the following conditions is met:

(1) the services are undertaken in association with an advocate who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) the services are in a pending proceeding, or reasonably related to a pending proceeding before the Community Court, if the advocate or a person the advocate is assisting, is authorized by law or order to appear in such proceeding;

(3) the services are in or reasonably related to a pending arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the advocate’s practice in a jurisdiction in which the advocate is admitted to practice, and are not services for which the forum requires pro hac vice admission; or

(4) the services are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the advocate's practice in a jurisdiction in which the advocate is admitted to practice.

(d) An advocate who is admitted in another tribal, state or federal jurisdiction, and who is not disbarred, on inactive status or suspended from practice in any jurisdiction, may provide advocacy services in this jurisdiction that:

(1) are provided to the advocate's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the advocate is authorized to provide by federal law or other law of this jurisdiction.

(e) Any advocate who engages in the practice of advocacy in multiple jurisdictions, whether authorized in accordance with these Rules or not, shall be subject to the Rules of Professional Conduct regarding advocate discipline.

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law - Comment

[1] An advocate may practice only in a jurisdiction in which the advocate is authorized to practice. An advocate may be admitted to practice in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice by an advocate, whether through the advocate's direct action or by the advocate assisting another person. For example, an advocate may not assist a person in practicing advocacy in violation of the rules governing professional conduct in that person's jurisdiction.

[2] The definition of the practice of advocacy is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice to those authorized to practice protects the public against rendition of advocacy services by unqualified persons. This Rule does not prohibit an advocate from employing the services of paraprofessionals and delegating functions to them, so long as the advocate supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] An advocate may provide professional advice and instruction to non-advocates whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies. Advocates also may assist independent non-advocates, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, an advocate may counsel non-advocates who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, an advocate who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the advocate establishes an office or other systematic and continuous presence in this jurisdiction for the practice of advocacy. Presence may be systematic and continuous even if the advocate is not physically present here. Such an advocate must not hold out to the public or otherwise represent that the advocate is admitted to practice in this jurisdiction.

[5] There is no single test to determine whether an advocate's services are provided on a "temporary basis" in this jurisdiction and may therefore be permissible under paragraph (c). Services may be "temporary" even though the advocate provides services in this jurisdiction on a

recurring basis, or for an extended period of time, as when the advocate is representing a client in a single lengthy negotiation or litigation.

[6] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if an advocate admitted only in another jurisdiction associates with an advocate licensed to practice in this jurisdiction. For this paragraph to apply, however, the advocate admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[7] Advocates who are not admitted to practice before the SRP-MIC Court may, however, be authorized by law, order or policy of another tribunal or administrative agency to appear before such tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), an advocate does not violate this Rule when the advocate appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires an advocate who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the advocate to obtain that authority.

[8] In some circumstances, an advocate who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the advocate is not licensed to practice in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction.

[9] Paragraph (c)(4) permits an advocate admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the advocate's practice in a jurisdiction in which the advocate is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that non-advocates may perform but that are considered the practice of law when performed by advocates.

[10] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the advocate's practice in a jurisdiction in which the advocate is admitted. A variety of factors evidence such a relationship. The advocate's client may have been previously represented by the advocate or may be resident in or have substantial contacts with the jurisdiction in which the advocate is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the advocate's work might be conducted in that jurisdiction, or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions. In addition, the services may draw on the advocate's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law. Advocates desiring to provide pro bono advocacy services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice, as well as advocates from the affected jurisdiction who seek to practice temporarily in another jurisdiction, but in which they are not otherwise authorized to practice, should consult the American Bar Association's Model Court Rule on Provision of Legal Services Following Determination of Major Disaster.

[11] An advocate who practices in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction.

Rule 5.6 Restrictions on Right to Practice

An advocate shall not participate in offering or making:

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

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

Rule 5.7 Responsibilities Regarding Law-Related Services

(a) An advocate may provide law-related services to clients and to others as defined in paragraph (b), either:

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

(2) by a separate entity which is controlled by the advocate individually or with others.

Where the law-related services are provided by the advocate in circumstances that are not distinct from the advocate's provision of legal services to clients, the advocate shall be subject to the provisions of the Rules of Professional Conduct in the course of providing such services. In circumstances in which law-related services are provided by a separate entity controlled by the advocate individually or with others, the advocate shall not be subject to the Rules of Professional Conduct, in the course of providing such services, only if the advocate takes reasonable measures to assure that a person obtaining the law-related services knows that the services of the separate entity are not legal services and that the protections of the client-advocate relationship do not apply.

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

Rule 5.7 Responsibilities Regarding Law-Related Services – Comment

When an advocate performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-advocate relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflict interests, and obligations of an advocate to maintain professional independence apply to the provision of law-related services when that may not be the case.

Rule 5.8 Accepting Appointments

An advocate shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

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

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

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

Rule 5.8 Accepting Appointments – Comment

[1] An advocate ordinarily is not obliged to accept a client whose character or cause the advocate regards as repugnant. The advocate's freedom to select clients is, however, qualified. An advocate may be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause an advocate may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the advocate could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the advocate as to be likely to impair the client-advocate relationship or the advocate's ability to represent the client. An advocate may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed advocate has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-advocate relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

Public Service

Rule 6.1: Membership in Legal Services Organization

RESERVED.

Rule 6.2: Law Reform Activities Affecting Client Interests

RESERVED.

Rule 6.3: Nonprofit and Court-Sponsored Limited Legal Service Programs

(a) An advocate 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 advocate or the client that the advocate will provide continuing representation in the matter:

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

(2) is subject to Rule 1.10 only if the advocate knows that another advocate associated with the advocate in a law firm is disqualified by Rules 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.

(c) Rule 1.5 does not apply to a representation governed by this Rule and for which the advocate does not charge a fee.

Rule 6.3: Nonprofit and Court-Sponsored Limited Legal Service Programs – Comment

[1] Legal service organizations, courts and various nonprofit organizations have established programs through which advocates 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 an advocate. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-advocate relationship is established, but there is no expectation that the advocate'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 an advocate 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] An advocate 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 advocate 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 an advocate 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 advocate knows that the representation presents a conflict of interest for the advocate, and with Rule 1.10 only if the advocate knows that another advocate in the advocate'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 the other matters being handled by the advocate'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 advocate to comply with Rule 1.10 when the advocate knows that the advocate's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, an advocate's participation in a short-term limited legal services program will not preclude the advocate'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 an advocate participating in the program be imputed to other advocates participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, an advocate undertakes to represent the client in the matter on an ongoing basis, Rules 1.5, 1.7, 1.9(a) and 1.10 become applicable.

Information About Legal Services

Rule 7.1 Communications Concerning an Advocate's Services

An advocate shall not make or knowingly permit to be made on the advocate's behalf a false or misleading communication about the advocate or the advocate's services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.

Rule 7.1 Communications Concerning an Advocate's Services - Comment

[1] This Rule governs all communications about an advocate's services, including advertising permitted by Rule 7.2. Whatever means are used to make known an advocate's services; statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the advocate's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the advocate or the advocate's services for which there is no reasonable factual foundation. Whether a communication about an advocate or legal services is false or misleading is based upon the perception of a reasonable person.

[3] A communication that truthfully reports an advocate's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the advocate's services or fees with the services or fees of other advocates may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

Rule 7.2 Advertising

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

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

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

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

(3) pay for a law practice in accordance with Rule 1.16; and

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

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

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

(c) Any communication made pursuant to this rule shall include the name and contact information of the advocate responsible for its content.

(d) Every advertisement (including advertisement by written solicitation) that contains information about the advocate's fees shall be subject to the following requirements:

(1) advertisements and written solicitations indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall disclose:

(A) that the client will be liable for expenses regardless of outcome unless the repayment of such is contingent upon the outcome of the matter; and

(B) whether the percentage fee will be computed before expenses are deducted from the recovery.

(2) range of fees or hourly rates for services may be communicated provided that the client is informed in writing at the commencement of any client-advocate relationship that the total fee within the range which will be charged or the total hours to be devoted will vary depending upon that particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;

(3) fixed fees for specific routine legal services, the description of which would not be misunderstood or be deceptive, may be communicated provided that the client is informed in writing at the commencement of any client-advocate relationship that the quoted fee will be available only to clients whose matters fall within the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be charged;

(4) an advocate who advertises a specific fee, range of fees or hourly rate for a particular service shall honor the advertised fee, or range of fees, for at least ninety (90) days unless the advertisement specifies a shorter period; provided, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(e) Advertisements on the electronic media may contain the same information as permitted in advertisements in the print media. If a law firm advertises on electronic media and a person appears purporting to be an advocate, such person shall in fact be an advocate employed full-time at the advertising law firm. If a law firm advertises a particular legal service on electronic media, and an advocate appears as the person purporting to render the service, the advocate appearing shall be the advocate who will actually perform the service advertised unless the advertisement discloses that the service may be performed by other advocates in the firm.

(f) Communications required by paragraphs (c) and (d) shall be clear and conspicuous. To be "clear and conspicuous", a communication must be of such size, color, contrast, location, duration, cadence, and audibility that an ordinary person can readily notice, read, hear, and understand it.

Rule 7.2 Advertising - Comment

[1] This Rule permits public dissemination of information, to include, but not limited to, flyers, email postings, newspaper advertisements, concerning an advocate's name or firm name, address, email address, website, and telephone number; the kinds of services the advocate will undertake; the basis on which the advocate's fees are determined, including prices for specific services and payment and credit arrangements; an advocate's foreign language ability; names of references and other information that might invite the attention of those seeking legal assistance.

[2] Neither this Rule nor Rule 6.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend an Advocate

[3] Advocates are not permitted to pay others for channeling professional work. An advocate may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of advocates and with respect to the conduct of non-advocates who prepare marketing materials for them.

[4] An advocate also may agree to refer clients to another advocate, in return for the undertaking of that person to refer clients or customers to the advocate. Such reciprocal referral arrangements must not interfere with the advocate's professional judgment as to making referrals or as to providing substantive legal services.

Rule 7.3 Solicitation of Clients

(a) An advocate not employed by the Community shall not by in-person, live telephone or real-time electronic contact solicit professional employment from the person contacted or employ or compensate another to do so when a motive for the advocate's doing so is the advocate's pecuniary gain, unless the person contacted:

(1) is an advocate; or

(2) has a family, close personal or prior professional relationship with the advocate.

(b) An advocate shall not solicit professional employment from a prospective client or knowingly permit solicitation on the advocate's behalf from the person contacted by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made known to the advocate a desire not to be solicited by the advocate;

(2) the solicitation involves coercion, duress or harassment; or

(3) the solicitation relates to a personal injury or wrongful death and is made within thirty (30) days of such occurrence.

(c) Every written, recorded or electronic communication from an advocate soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "*Advertising Material*" on the outside envelope, if any, and at the beginning

and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a) (1) or (a) (2).

Rule 7.3 Solicitation of Clients - Comment

[1] A solicitation is a targeted communication initiated by an advocate that is directed to a specific person and that offers to provide, or can be understood as offering to provide, legal services. In contrast, an advocate's communication directed to the general public or an advocate's communication in response to a request for information usually does not constitute a solicitation. Paragraph (a) is not intended to prohibit an advocate from participating in constitutionally protected activities of public or charitable legal- service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[2] The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by advocates, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

Rule 7.4 Communication of Fields of Practice and Specialization

(a) An advocate may communicate the fact that the advocate does or does not practice in particular fields of law.

(b) An advocate shall not state or imply that an advocate is certified as a specialist in a particular field of law, unless:

(1) the advocate has been certified as a specialist by an organization that has been approved by an appropriate authority or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

Rule 7.5 Firm Names and Letterheads

RESERVED.

Rule 7.6 Political Contributions to Obtain Legal Engagements or Appointments by Judges

RESERVED.

Maintaining the Integrity of the Profession

Rule 8.1 Admission and Disciplinary Actions

Any applicant for admission to the practice in SRP-MIC Court, or in connection with a disciplinary action, shall not:

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

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

Rule 8.1 Admission and Disciplinary Actions - Comment

[1] The duty imposed by this Rule extends to persons seeking admission and to admitted advocates. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to an advocate's own admission or discipline as well as that of others. Thus, it is a separate professional offense for an advocate to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the advocate's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or advocate may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of tribal and state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] An advocate representing an applicant for admission to practice in the Community, or representing an advocate who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-advocate relationship, including Rule 1.6 and in some cases, Rule 3.3.

Rule 8.2 Judicial and Legal Officials

(a) An advocate shall not make a statement that the advocate knows to be false or make a statement with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer, or public legal officer.

(b) An advocate who is an applicant or candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Rule 8.2 Judicial and Legal Officials - Comment

[1] To maintain the fair and independent administration of justice, advocates are encouraged to continue traditional efforts to defend judges and courts that have been unjustly criticized.

[2] When an advocate seeks judicial office, the advocate should be bound by applicable limitations on political activity.

Rule 8.3 Reporting Professional Misconduct

(a) An advocate who has personal knowledge that another advocate has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that advocate's honesty, trustworthiness or fitness as an advocate in other respects, shall inform the appropriate professional authority in accordance with the Community Code and regulations. The term "fitness" refers to an advocate's mental and physical ability to carry out the duties and responsibilities of the advocate's role.

(b) An advocate who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority in accordance with the Community Code and regulations.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by an advocate or judge while participating in an approved advocate assistance program to the extent that such information would be confidential if it related to the representation of a client.

Rule 8.3 Reporting Professional Misconduct - Comment

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

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

[3] If an advocate were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement is unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the advocate is aware. Similar considerations apply to the reporting of judicial misconduct.

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

[5] Information about an advocate's or judge's misconduct or fitness may be received by an advocate in the course of that advocate's participation in an approved advocates or judicial assistance program or employee assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages advocates and judges to seek treatment through such a program. Conversely, without such an

exception, advocates and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

Rule 8.4 Misconduct

It is professional misconduct for an advocate to:

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

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

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

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

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

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

(g) file a notice of change of judge for cause, for an improper purpose, such as obtaining a trial delay or other circumstances.

(h) knowingly manifest by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity or socioeconomic status, when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate this Rule. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

Rule 8.4 Misconduct - Comment

[1] Paragraph (a), does not prohibit an advocate from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses that have no specific connection to fitness for the practice of law. Although an advocate is personally answerable to the entire criminal law, an advocate should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] Advocates holding public office assume legal responsibilities going beyond those of other citizens. An advocate's abuse of public office can suggest an inability to fulfill the professional role of an advocate. The same is true of abuse of positions of private trust such as trustee, executor,

administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[4] Paragraph (g) makes it professional misconduct for an advocate to file a notice of change of judge for cause for an improper purpose. The purpose of the rule is to allow a party to ask for a new judge when a party may perceive a bias that does not rise to disqualification under the rules.

Rule 8.5 Disciplinary Authority; Choice of Law

(a) Disciplinary Authority. An advocate admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the advocate's conduct occurs. An advocate not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the advocate provides or offers to provide any legal services in this jurisdiction. An advocate may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional Conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the advocate's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. An advocate shall not be subject to discipline if the advocate's conduct conforms to the rules of a jurisdiction in which the advocate reasonably believes the predominant effect of the advocate's conduct will occur.

Rule 8.5 Disciplinary Authority; Choice of Law - Comment

Disciplinary Authority

[1] Extension of the disciplinary authority of this jurisdiction to other advocates who provide or offer to provide legal services in this jurisdiction is for the protection of the Members of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. The fact that the advocate is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the advocate for civil matters.

Choice of Law

[2] When an advocate's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the advocate's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the advocate's conduct conforms to the rules of a jurisdiction in which the advocate reasonably believes the predominant effect will occur, the advocate shall not be subject to discipline under this Rule.

[3] If two admitting jurisdictions were to proceed against an advocate for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all

appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against an advocate on the basis of two inconsistent rules.

Division 3. Rules of Judicial Conduct.

CANON 1

CANON 2

CANON 3

Rule 3.6 Affiliation with Discriminatory Organizations

Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

Rule 3.8 Appointments to Fiduciary Positions

Rule 3.9 Service as Arbitrator or Mediator

Rule 3.10 Practice of Law

Rule 3.11 Financial, Business, or Remunerative Activities

Rule 3.12 Compensation for Extrajudicial Activities

Rule 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

Rule 3.14 Reimbursement of Expenses and Waivers of Fees or Charges

Rule 3.15 Financial Reporting Requirements

Rule 3.16 Conducting Weddings

PREAMBLE

An independent, fair, and impartial judiciary is indispensable to our system of justice. The Community legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our community. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the rules contained in this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

This code establishes standards for the ethical conduct of judges. It is not intended as an exhaustive guide for the conduct of judges, who are governed in their judicial and personal conduct by general ethical standards as well as by the code. The code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

SCOPE

This code consists of three canons, numbered rules under each canon, and comments that generally follow and explain each rule. Scope and terminology sections provide additional guidance in interpreting and applying the code. An application section establishes when the various rules apply to a judge or judicial candidate.

The canons state principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a rule, the canons provide important guidance in interpreting the rules. Where a rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

The comments that accompany the rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Second, the comments identify aspirational goals for judges. To implement fully the principles of this code as articulated in the canons, judges should strive to exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

The rules in the code are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

The black letter of the rules is binding and enforceable. It is not intended, however, that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the rules and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

The code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

"Appropriate authority" means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported.

"Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure.

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality.

"Domestic partner" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

"Economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(a) an interest in the individual holdings within a mutual or common investment fund;

(b) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(c) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(d) an interest in the issuer of government securities held by the judge.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian.

"Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

"Impending matter" is a matter that is imminent or expected to occur in the near future.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality.

“Independence” means a judge’s freedom from influence or controls other than those established by law.

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character.

“Judge” means any person who is authorized to perform judicial functions within the Community judiciary, including a judge of a court of record, or pro tempore judge.

“Knowingly,” “knowledge,” “known,” and “knows” means actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

“Law” encompasses court rules as well as Community ordinances, regulations, statutes, constitutional provisions, and applicable case law.

“Member of the judge’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

“Member of a judge’s family residing in the judge’s household” means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household.

“Nonpublic information” means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in dependency cases or psychiatric reports.

“Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

“Third degree of relationship” includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

APPLICATION

The Application section establishes when the various rules apply to a judge or judicial candidate.

PART A

Applicability of this Code.

(a) The provisions of the code apply to all Community judges.

COMMENT

The rules in this code have been formulated to address the ethical obligations of any person who serves a judicial function within the Community judicial branch, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

PART B

Pro Tempore Judge.

A pro tempore judge is a person appointed pursuant to Sections 4-31(a)(9) and 4-96(a) of the Community Code, who serves or expects to serve repeatedly on a less than full-time basis, but under a separate appointment by a presiding judge for each limited period of service or for each matter.

(b) A pro tempore judge is not required to comply:

(1) except while serving as a judge with Rules 1.2 (promoting confidence in the judiciary), 2.4 (external influences on judicial conduct), 2.10 (judicial statements on pending and impending cases), 3.2 (appearance before governmental bodies and consultation with government officials), 3.3 (acting as a character witness); or

(2) at any time with Rules 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 appointments to fiduciary positions), 3.9 (service as arbitrator or mediator, 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), and 3.15 (reporting requirements).

(c) A person who has been a pro tempore judge shall not act as an advocate in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Community's Rules of Professional Conduct.

(d) A pro tempore judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a advocate in such specialized division or court during such service.

(e) A pro tempore judge who serves repeatedly on a continuing scheduled basis for a type or category of case shall not appear as an advocate in the same type or category of cases.

(f) A pro tempore judge who is appointed to perform judicial functions of a nonappealable nature on a continuing scheduled basis shall not appear as an advocate in other proceedings involving the function of the court in which the service was performed, but may appear as an advocate in all other areas of practice before the court.

COMMENT

[1] The restrictions of Part B apply to the members of a pro tempore judge's firm.

[2] The purpose of Part B is to allow the greatest possible use of pro tempore judges to augment judicial resources in order to reduce case backlogs and the time necessary to process cases to disposition while minimizing any potential for the appearance of impropriety.

[3] The language of Part B is intended to allow, at a minimum, the following practices:

(a) An advocate sits as a pro tempore judge for one family law trial and during this time appears in family law cases as an advocate in other matters.

(b) An advocate sits as a pro tempore juvenile judge on a continuing scheduled basis and during this time appears in court as an advocate in all types of proceedings except for juvenile matters.

(c) An advocate sits as a pro tempore judge in weekend detention/initial appearance hearings and thereafter appears as an advocate in criminal cases except that the advocate does not appear in detention/initial hearings on behalf of clients.

PART C

Time for Compliance by New Judges.

A person to whom this code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (appointments to fiduciary positions) and 3.11 (financial, business, or remunerative activities) apply shall comply with those rules as soon as

reasonably possible, but in no event later than one year after the code becomes applicable to the judge.

COMMENT

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

CANON 1

Rule 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.1 Compliance with the Law – Comment

For a discussion of the judge's obligation when applying and interpreting the law, see Rule 2.2 and the related comment.

Rule 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.2 Promoting Confidence in the Judiciary – Comment

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and advocates, support collegiality and professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules, or provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party. A judge's

personal and family circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.

[6] A judge should initiate and participate in activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this code.

[7] A judge may respond to or issue statements in connection with allegations concerning the judge's conduct in a matter or to false, misleading, or unfair allegations or attacks upon the judge's character or reputation.

Rule 1.3 Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Rule 1.3 Avoiding Abuse of the Prestige of Judicial Office – Comment

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge; however, see Rule 3.3 regarding testimony as a character witness in a proceeding. The judge may use judicial letterhead if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may cooperate with appointing authorities and screening committees in the judicial selection process, by recommending qualified candidates for judicial office, and by responding to inquiries from and volunteering information to such entities concerning the professional qualifications of a person being considered for judicial office.

[4] A judge who writes or contributes to publications of for-profit entities should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

Rule 2.1 Giving Precedence to Judicial Duties

The judicial duties of a judge take precedence over all of a judge's other activities.

Rule 2.1 Giving Precedence to Judicial Duties – Comment

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Judicial duties are those prescribed by law, including this Code. In addition, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

Rule 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Rule 2.2 Impartiality and Fairness – Comment

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] A good faith error of fact or law does not violate this rule. However, a pattern of legal error or an intentional disregard of the law may constitute misconduct.

[4] It is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard, provided that such accommodations do not deprive other parties of their right to a fair and efficient adjudication of the issues.

Rule 2.3 Bias, Prejudice, and Harassment

(a) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(b) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status (including same sex marriages), socioeconomic status, or political affiliation, and

shall not permit court staff, court officials, or others who are subject to the judge's direction and control, to do so.

(c) A judge shall require advocates in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status (including same sex marriages), socioeconomic status, or political affiliation, against parties, witnesses, advocates, or others.

(d) The restrictions of paragraphs (b) and (c) do not preclude judges or advocates from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Rule 2.3 Bias, Prejudice, and Harassment – Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Facial expressions and body language may convey to parties and advocates in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

[5] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the code if undertaken by the judge.

Rule 2.4 External Influences on Judicial Conduct

(a) A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(b) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(c) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Rule 2.4 External Influences on Judicial Conduct – Comment

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Rule 2.5 Competence, Diligence, and Cooperation

(a) A judge shall perform judicial and administrative duties competently, diligently, and promptly.

(b) A judge shall reasonably cooperate with other judges and court officials in the administration of court business.

(c) A judge shall participate actively in judicial education programs and shall complete mandatory judicial education requirements.

Rule 2.5 Competence, Diligence, and Cooperation – Comment

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their advocates cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Rule 2.6 Ensuring the Right to Be Heard

(a) A judge shall accord to every person who has a legal interest in a proceeding, or that person's advocate, the right to be heard according to law.

(b) A judge may encourage parties to a proceeding and their advocates to settle matters in dispute, but shall not coerce any party into settlement.

Rule 2.6 Ensuring the Right to Be Heard – Comment

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the advocates and the parties if the case remains with the judge if settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, or is on appellate review, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, (6) whether the matter is civil or criminal, and (7) whether the judge involved in the settlement discussions will also be involved in the decision on the merits.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision-making during trial or on appeal and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

Rule 2.7 Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

Rule 2.7 Responsibility to Decide – Comment

[1] Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

[2] A judge is not ethically obligated to automatically recuse himself or herself from a case in which one of the litigants has filed a complaint against the judge.

Rule 2.8 Decorum, Demeanor, and Communication with Jurors

(a) A judge shall require order and decorum in proceedings before the court.

(b) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, advocates, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of advocates, court staff, court officials, and any court personnel who are subject to the judge's direction and control.

(c) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Rule 2.8 Decorum, Demeanor, and Communication with Jurors – Comment

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case. With certain qualifications judges may speak to a discharged jury following the return of a verdict. This rule does not preclude a judge from communicating with jurors personally, in writing, or through court personnel to obtain information for the purpose of improving the administration of justice.

Rule 2.9 Ex Parte Communication

(a) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their advocates, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(i) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(ii) the judge makes provision to promptly notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding.

(3) A judge may consult with other judges, or with court personnel whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities. If in doing so the judge acquires factual information that is not part of the record, the judge shall make provision promptly to notify the parties of the substance of the information and provide the parties with an opportunity to respond. The judge may not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their advocates in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(b) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(c) Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(d) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this rule is not violated by court staff, court officials, and other court personnel subject to the judge's direction and control.

Rule 2.9 Ex Parte Communication – Comment

[1] To the extent reasonably possible, all parties or their advocates shall be included in communications with a judge. A judge may also direct judicial staff, without invoking the notice and disclosure provisions of this rule, to screen written ex parte communications and to take appropriate action consistent with this rule.

[2] Whenever the presence of a party or notice to a party is required by this rule, it is the party's advocate, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with persons who are not participants in the proceeding, except to the limited extent permitted by this rule.

[4] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[5] The prohibition against a judge independently investigating the facts in a matter extends to information available in all mediums, including electronic.

[6] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this code.

[7] An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

[8] A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

[9] If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

Rule 2.10 Judicial Statements

(a) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(b) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(c) A judge shall require court personnel who are under the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (a) and (b).

(d) Notwithstanding the restrictions in paragraph (a), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(e) Subject to the requirements of paragraph (a), a judge may respond directly or through a third party in writing, via social media or broadcast media or otherwise to allegations in the media or elsewhere concerning the judge's conduct in a matter or to false, misleading, or unfair allegations or attacks upon the judge's character or reputation.

Rule 2.10 Judicial Statements – Comment

[1] This rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an administrative capacity, the judge may comment publicly on the merits of the case. In cases in which the judge is a litigant in a nominal capacity, such as a special action, the judge must not comment publicly except as otherwise specifically permitted by this rule.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connections with allegations concerning the judge's conduct in a matter or to false, misleading, or unfair allegations or attacks upon the judge's character or reputation.

Rule 2.11 Disqualification

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's advocate, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(i) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(ii) acting as an advocate in the proceeding;

(iii) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(iv) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest, as defined by this code or Community law, in the subject matter in controversy or in a party to the proceeding.

(4) The judge, while a judge, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(i) served as an advocate in the matter in controversy, or was associated with an advocate in the preceding four years who participated substantially as an advocate in the matter during such association;

(ii) served in governmental employment, and in such capacity participated personally and substantially as an advocate or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(iii) was a material witness concerning the matter; or

(iv) previously presided as a judge over the matter in another court.

(b) A judge shall keep reasonably informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(c) A judge subject to disqualification under this rule, other than for bias or prejudice under paragraph (a)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their advocates to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and advocates agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

(d) Official communications received in the course of performing judicial functions as well as information gained through training programs and from experience do not in themselves create a basis for disqualification.

Rule 2.11 Disqualification – Comment

[1] Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (a)(1) through (5) apply.

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that an advocate in a proceeding is affiliated with a firm or Community department with which a member of the judge's family is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (a), or a member of the judge's family is known by the judge to have an interest in the firm or Community Department that could be substantially affected by the proceeding under paragraph (a)(2)(iii), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their advocates might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(a) an interest in the individual holdings within a mutual or common investment fund;

(b) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(c) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(d) an interest in the issuer of government securities held by the judge.

[7] A advocate in a government agency does not ordinarily have an association with other advocates employed by that agency within the meaning of Rule 2.11(a)(6)(i); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

Rule 2.12 Supervisory Duties

(a) A judge shall require court personnel who are under the judge's direction and control to act in a manner consistent with the judge's obligations under this code.

(b) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Rule 2.12 Supervisory Duties – Comment

[1] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

Rule 2.13 Administrative Appointments

(a) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(b) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Rule 2.13 Administrative Appointments – Comment

[1] Appointees of a judge include assigned counsel, officials such as guardian. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (a).

Rule 2.14 Disability and Impairment

A judge having a reasonable belief that the performance of an advocate or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to Community assistance or similar program.

Rule 2.14 Disability and Impairment – Comment

[1] "Appropriate action" means action intended and reasonably likely to help the judge or advocate in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include, but is not limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this rule. Assistance programs have many approaches for offering help to impaired judges and advocates, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or advocate to the appropriate authority, agency, or body. See Rule 2.15.

Rule 2.15 Responding to Judicial and Advocate Misconduct

(a) A judge having knowledge that another judge has committed a violation of this code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(b) A judge having knowledge that an advocate has committed a violation of the Community Rules of Professional Conduct that raises a substantial question regarding the advocate's honesty, trustworthiness, or fitness as an advocate in other respects shall inform the appropriate authority.

(c) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this code shall take appropriate action.

(d) A judge who receives information indicating a substantial likelihood that an advocate has committed a violation of the Rules of Professional Conduct shall take appropriate action.

(e) Acts of a judge in the discharge of disciplinary responsibilities required or permitted by Rule 2.15 are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Rule 2.15 Responding to Judicial and Advocate Misconduct – Comment

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (a) and (b) impose an obligation on the judge to report to the appropriate disciplinary authority the known serious misconduct of another judge or an advocate that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or advocate. Ignoring or denying known

misconduct among one's judicial colleagues or members of the advocacy profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or an advocate may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (c) and (d). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority. Similarly, actions to be taken in response to information indicating that an advocate has committed a violation of the Community Rules of Professional Conduct may include but are not limited to communicating directly with the advocate who may have committed the violation, or reporting the suspected violation to the appropriate authority.

[3] If a judge were obliged to report every act of misconduct, the failure to report any violation would itself be a professional offense. Such a requirement is unenforceable. This Rule limits the reporting obligation to those offenses that the judiciary must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the advocate is aware.

Rule 2.16 Cooperation with Disciplinary Authorities

(a) A judge shall cooperate and be candid and honest with judicial and advocate disciplinary authorities.

(b) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or an advocate.

Rule 2.16 Cooperation with Disciplinary Authorities – Comment

[1] Cooperation with investigations and proceedings of judicial and advocate discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

[2] Judicial employees have a right to cooperate or communicate with the Commission on Judicial Conduct at any time, without fear of reprisal, for the purpose of discussing potential or actual judicial misconduct.

CANON 3

Rule 3.1 Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this code. However, when engaging in extrajudicial activities, a judge shall not:

(a) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(b) participate in activities that will lead to frequent disqualification of the judge;

(c) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality or demean the judicial office;

(d) engage in conduct that would appear to a reasonable person to be coercive; or

(e) make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Rule 3.1 Extrajudicial Activities in General – Comment

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, political affiliation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(a), might create the risk that the person solicited would feel obligated to respond favorably or would do so to curry favor with the judge.

Rule 3.2 Appearances Before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(a) in connection with matters concerning the law, the legal system, or the administration of justice;

(b) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(c) when the judge is acting in a matter involving the judge's personal interests or when the judge is acting in a fiduciary capacity.

Rule 3.2 Appearances Before Governmental Bodies and Consultation with Government Officials – Comment

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(c), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions and must otherwise exercise caution to avoid using the prestige of judicial office.

Rule 3.3 Acting as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Rule 3.3 Acting as a Character Witness – Comment

A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

Rule 3.4 Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

Rule 3.4 Appointments to Governmental Positions – Comment

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her community, country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

Rule 3.5 Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

Rule 3.5 Use of Nonpublic Information – Comment

[1] In the course of performing judicial duties a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of any individual if consistent with other provisions of this code.

Rule 3.6 Affiliation with Discriminatory Organizations

(a) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(b) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (a). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

(c) A judge's membership or participation in a religious organization as a lawful exercise of the freedom of religion, or a judge's membership or participation in an organization that engages

in expressive activity from which the judge cannot be excluded consistent with the judge's lawful exercise of his or her freedom of expression or association, is not a violation of this rule.

Rule 3.6 Affiliation with Discriminatory Organizations – Comment

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization stigmatizes excluded persons as inferior and odious, whether it perpetuates and celebrates cultures, historical events, and ethnic or religious beliefs, identities, or traditions, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] This rule does not prohibit a judge's national or state military service.

Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(a) A judge may not directly solicit funds for an organization. However, subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, volunteering services or goods at fund-raising events, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may do so only if the event concerns the law, the legal system, or the administration of justice.

(5) making or soliciting recommendations to such a public or private fund-granting organization or entity in connection with its fund-granting programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(i) will be engaged in proceedings that would ordinarily come before the judge; or

(ii) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge may encourage advocates to provide pro bono legal services.

(c) Subject to the preceding requirements, a judge may:

(1) Provide leadership in identifying and addressing issues involving equal access to the justice system; develop public education programs; engage in activities to promote the fair administration of justice; and convene or participate or assist in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, or the administration of justice.

(2) Endorse projects and programs directly related to the law, the legal system, the administration of justice, and the provision of services to those coming before the courts, and may actively support the need for funding of such projects and programs.

(3) Participate in programs concerning the law or which promote the administration of justice.

Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities – Comment

[1] The activities permitted by paragraph (a) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations. An organization concerned with the law, the legal system, and the administration of justice may include an accredited institution of legal education, whether for-profit or not-for-profit.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the

organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute participation in violation of paragraph (a)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing advocates to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging advocates to participate in pro bono legal services, if in doing so the judge does not employ coercion or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training advocates to do pro bono legal work, and participating in events recognizing advocates who have done pro bono work.

[6] A judge may be an announced speaker at a fund-raising event benefitting indigent representation, scholarships for law students, or accredited institutions of legal education.

Rule 3.8 Appointments to Fiduciary Positions

(a) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(b) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(c) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(d) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

Rule 3.8 Appointments to Fiduciary Positions – Comment

A judge should recognize that other restrictions imposed by this code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example,

serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Rule 3.9 Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

Rule 3.9 Service as Arbitrator or Mediator – Comment

[1] This rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

[2] Pro tempore judges may be exempt from this section. See Application, Part B.

Rule 3.10 Practice of Law

A judge shall not practice law or serve as an advocate. A judge may represent himself or herself and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's advocate in any forum.

Rule 3.10 Practice of Law – Comment

[1] A judge may act as his or her own advocate in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

[2] Pro tempore judges may be exempt from this section. See Application, Part B.

[3] Judges who are actively acting as advocates at the time of their appointment to the bench are encouraged to become familiar with ethical considerations immediately affecting the transition from advocate to judge.

[4] This rule does not prohibit the practice of law pursuant to military service.

Rule 3.11 Financial, Business, or Remunerative Activities

(a) A judge may hold and manage investments of the judge and members of the judge's family.

(b) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any for-profit business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(c) A judge shall not engage in financial activities permitted under paragraphs (a) and (b) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with advocates or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this code.

Rule 3.11 Financial, Business, or Remunerative Activities – Comment

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this rule.

[3] A judge's uncompensated participation as an officer, director, or advisor of an organization concerned with the law, the legal system, or the administration of justice is not prohibited by this rule. See Rule 3.7, Comment 1.

[4] To the extent permitted by Rule 1.3, a judge's participation as a teacher at an educational institution is not prohibited by this rule. See Rule 3.12, Comment 1.

Rule 3.12 Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Rule 3.12 Compensation for Extrajudicial Activities – Comment

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the

compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

Rule 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(a) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(b) Unless otherwise prohibited by law or by paragraph (a), a judge may accept the following:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including advocates, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards granted on the same terms and based on the same criteria applied to other applicants;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge;

(9) gifts incident to a public testimonial;

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(i) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(ii) an event associated with any of the judge's educational, religious, charitable, fraternal, or civic activities permitted by this code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

Rule 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value – Comment

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 prohibits the acceptance of such benefits except in circumstances where the risk of improper influence is low and subject to applicable financial disclosure requirements. See Rule 3.15.

[2] Gift-giving among friends and relatives is a common occurrence and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (b)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances but may require public reporting.

[3] The receipt of ordinary social hospitality, commensurate with the occasion, is not likely to undermine the integrity of the judiciary. However, the receipt of other gifts and things of value from an attorney or party who has or is likely to come before the judge will be appropriate only in the rarest of circumstances.

[4] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[5] If a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to influence the judge indirectly. A judge should remind family and household members of the reporting requirements imposed upon judges by Rule 3.15 and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

Rule 3.14 Reimbursement of Expenses and Waivers of Fees or Charges

(a) Unless otherwise prohibited by Rules 3.1 and 3.13(a) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this code.

(b) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

Rule 3.14 Reimbursement of Expenses and Waivers of Fees or Charges – Comment

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this code.

[3] A judge must determine whether acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

> *(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity.*
>
> *(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;*
>
> *(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;*
>
> *(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;*

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Rule 3.15 Financial Reporting Requirements

RESERVED

Rule 3.16 Conducting Weddings

(a) The performance of wedding ceremonies by a judge is a discretionary function rather than a mandatory function of the court.

(b) A judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony.

(c) A judge shall not advertise his or her availability for performing wedding ceremonies.

(d) A judge shall not charge or accept a fee, honorarium, gratuity, or contribution for performing a wedding ceremony during court hours.

(e) A judge may charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court.

C_E_R_T_I_F_I_C_A_T_I_O_N

This ordinance is hereby enacted pursuant to the authority contained in Article VII Section 1(c)(1) of the Constitution of the Salt River Pima-Maricopa Indian Community ratified by the Tribe on February 28, 1990 and approved by the Secretary of the Interior on March 19, 1990 and amended by the Tribe on February 27, 1996 and approved by the Secretary on April 23, 1996, the foregoing ordinance was approved on the 5 day of February, 2025 in a duly called meeting held by the Community Council in Salt River/Lehi Arizona at which a quorum of 7 members were present by a vote of 7 for 0 opposed 0 abstentions 2 excused.

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COUNCIL

Martin Harvier, President

ATTEST:

Ardell Moore for
Erica Harvier, Council Secretary

Approved as to Form by the Office of the General Counsel
Jeff Harmon
January 27, 2025