

M.R. 3140

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Order entered July 6, 2023.

(Deleted material is struck through, and new material is underscored.)

Effective immediately, Illinois Supreme Court Rule 756 and Rules 1.0, 1.1, 1.16, and 7.2 of the Illinois Rules of Professional Conduct of 2010 are amended, as follows.

Amended Rule 756

Rule 756. Registration and Fees

(a) Annual Registration Required. Except as hereinafter provided, every attorney admitted to practice law in this state shall register and pay an annual registration fee to the Commission on or before the first day of January. Every out-of-state attorney permitted to appear and provide legal services in a proceeding pursuant to Rule 707 shall register for each year in which the attorney has such an appearance of record in one or more proceedings. All fees paid pursuant to this rule shall be deemed earned and non-refundable on and after the first day of January. Penalties paid pursuant to this rule prior to the repeal of its penalty provision shall be deemed earned and non-refundable. Except as provided below, all fees paid pursuant to this rule shall be retained as a part of the disciplinary fund. The following schedule shall apply beginning with registration for 2021 and until further order of the Court:

(1) No registration fee is required of an attorney admitted to the Illinois bar less than one year before the first day of January for which the registration fee is due; an attorney admitted to the Illinois bar for more than one year but less than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of \$121; an out-of-state attorney permitted to appear and provide legal services pursuant to Rule 707 shall pay a registration fee of \$121 for each year in which the attorney's appearance is of record in one or more such proceedings if a per-proceeding fee is required in any such proceeding under Rule 707(f); an attorney admitted to the Illinois bar for more than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of \$385, out of which \$20 shall be remitted to the Lawyers' Assistance Program provider, \$10 shall be remitted to the Supreme Court Commission on Access to Justice, \$95 shall be remitted to the Lawyers Trust Fund, \$25 shall be remitted to the Supreme Court Commission on Professionalism, and \$25 shall be remitted to the Client Protection Program Trust Fund.

(2) An attorney on active duty in the Armed Forces of the United States shall be exempt from paying a registration fee until the first day of January following discharge.

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**SUPREME COURT
CLERK**

(3) An attorney serving in one of the following offices in the judicial branch shall be exempt from paying a registration fee until the first day of January following the end of the attorney's service:

(A) in the office of justice, judge, associate judge or magistrate of a court of the United States of America or the State of Illinois; or

(B) in the office of judicial law clerk, administrative assistant, secretary or assistant secretary to such a justice, judge, associate judge or magistrate, or in any other office included within the Supreme Court budget that assists the Supreme Court in its adjudicative responsibilities, provided that the exemption applies only if the attorney is prohibited by the terms of his or her employment from actively engaging in the practice of law.

(4) Upon written application and for good cause shown, the Administrator may excuse the payment of any fee due pursuant to this rule in any case in which payment thereof will cause undue hardship to the attorney. For purposes of this rule, undue hardship is defined as adjusted gross income of the attorney's household that is at or below two times the poverty guidelines established by the United States Department of Health and Human Services for the Contiguous 48 States and the District of Columbia, in effect at the time of attorney's submission of the hardship application. The attorney's application shall set forth the adjusted gross household income and the number of dependents set forth on the federal income tax return filed by the attorney for the preceding year or, if no return was filed that sets forth household income, information that would permit calculation of adjusted household income. A copy of the federal income tax return, including all schedules, for the preceding year, if any, must be included as part of the application. The Administrator may require that the attorney submit other information and records that the Administrator deems necessary to determine undue hardship. The Administrator may also take into account other extraordinary economic circumstances. Information provided pursuant to paragraph (a)(4) of this rule shall be deemed confidential pursuant to this rule.

(5) An attorney may advise the Administrator in writing that he or she desires to assume inactive status and, thereafter, register as an inactive status attorney. The annual registration fee for an inactive status attorney shall be \$121. Upon such registration, the attorney shall be placed upon inactive status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law pursuant to the attorney's Illinois law license, except as is provided in paragraph (k) of this rule. An attorney who is on the master roll as an inactive status attorney may advise the Administrator in writing that he or she desires to resume the practice of law, and thereafter register as active upon payment of the registration fee required pursuant to this rule. If the attorney is restored to active status after having paid the inactive status fee for the year, the attorney shall pay the difference between the inactive status registration fee and the registration fee required pursuant to paragraphs (a)(1) through (a)(3) of this rule. Inactive status pursuant to this rule does not include inactive disability status as described in Rules 757 and 758. Any attorney on inactive disability status is not required to pay an annual fee.

(6) An attorney may advise the Administrator that he or she elects retirement status. Upon such election, the attorney shall be placed upon retirement status and shall no longer be listed

on the master roll or be eligible to practice law or hold himself or herself out as being authorized to practice law pursuant to the attorney's Illinois law license, except as is provided in paragraph (k) of this rule. Payment of any reinstatement fee due pursuant to paragraph (i) of this rule at the time of such election shall be deferred until any request of the attorney to register on active or inactive status. An attorney on retirement status is relieved thereafter from the annual obligation to register and pay the registration fee, except as required by paragraph (k) of this rule. An attorney on retirement status may advise the Administrator that he or she desires to register as an active or inactive status attorney and, thereafter so register upon payment of the fee required for the current year for that registration status, plus the reinstatement fee, including any deferred reinstatement fee, required by paragraph (i) of this rule.

(7) An attorney who is on voluntary inactive status pursuant to former Rule 770 who wishes to register for any year after 1999 shall file a petition for restoration pursuant to Rule 759. If the petition is granted, the attorney shall advise the Administrator in writing whether he or she wishes to register as active or inactive or to elect retirement status. If the attorney wishes to register as active or inactive, the attorney shall pay the reinstatement fee required by paragraph (i) of this rule, plus the fee required for the current year for that registration status. If the attorney elects retirement status, payment of any reinstatement fee pursuant to this rule at the time of the attorney's election shall be deferred until any request of the attorney to be reinstated to the master roll.

(8) Permanent Retirement Status. An attorney may file a petition with the Court requesting that he or she be placed on permanent retirement status. All of the provisions of retirement status enumerated in Rule 756(a)(6) shall apply, except that an attorney who is granted permanent retirement status may not thereafter change his or her registration designation to active or inactive status, petition for reinstatement pursuant to Rule 767, or provide *pro bono* services as otherwise allowed pursuant to paragraph (k) of this rule.

(A) The petition for permanent retirement status must be accompanied by a consent from the Administrator, consenting to permanent retirement status. The Administrator may consent if no prohibitions listed in subparagraph (a)(8)(B) of this rule exist. If the petition is not accompanied by a consent from the Administrator, it shall be denied.

(B) An attorney shall not be permitted to assume permanent retirement status if:

1. there is a pending investigation or proceeding against the attorney in which clear and convincing evidence has or would establish that:

a. the attorney converted funds or misappropriated funds or property of a client or third party in violation of a rule of the Illinois Rules of Professional Conduct;

b. the attorney engaged in criminal conduct that reflects adversely on the attorney's honesty in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct; or

c. the attorney's conduct resulted in an actual loss to a client or other person and the Court's rules or precedent would allow for a restitution order for that type of loss in a disciplinary case, reinstatement case, or Client Protection Program award, unless restitution has been made; or

2. the attorney retains an active license to practice law in any jurisdictions other

than the State of Illinois.

(C) If permanent retirement status is granted, any pending disciplinary investigation of the attorney shall be closed and any proceeding against the attorney shall be dismissed. The Administrator may resume such investigations pursuant to Commission Rule 54 and may initiate additional investigations and proceedings of the attorney as circumstances warrant. The permanently retired attorney shall notify other jurisdictions in which the he or she is licensed to practice law of his or her permanent retirement in Illinois. The permanently retired attorney may not reactivate a license to practice law or obtain a license to practice law in any other jurisdiction.

(b) The Master Roll. The Administrator shall prepare a master roll of attorneys consisting of the names of attorneys who have registered and have paid or are exempt from paying the registration fee and of recently admitted attorneys who are not yet required to register. The Administrator shall maintain the master roll in a current status. At all times a copy of the master roll shall be on file in the office of the clerk of the Court. An attorney who is not listed on the master roll is not entitled to practice law or to hold himself or herself out as authorized to practice law pursuant to the attorney's Illinois law license. An attorney listed on the master roll as on inactive status shall not be entitled to practice law or to hold himself or herself out as authorized to practice law pursuant to the attorney's Illinois law license, except as is provided in paragraph (k) of this rule. An attorney who has elected retirement status shall not be included on the master roll, except as provided in paragraph (k) of this rule.

(c) Registration.

(1) Each Illinois attorney is obliged to register on or before the first day of January of each year unless the attorney has elected retirement status pursuant to paragraph (a)(6) of this rule, has been allowed to assume permanent retirement status pursuant to paragraph (a)(8) of this rule, or has been placed on inactive status pursuant to former Rule 770, except that an attorney not authorized to practice law due to discipline or disability inactive status is not required to register until the conclusion of the discipline or disability inactive status.

(2) Registration requires that the attorney provide all information specified pursuant to paragraphs (c) through (g) of this rule. An attorney's registration shall not be complete until all such information has been submitted.

(3) On or before the first day of November of each year, the Administrator shall send to each attorney on the master roll a notice of the annual registration requirement. The notice may be sent to the attorney's listed master roll mail or e-mail address. Failure to receive the notice shall not constitute an excuse for failure to register.

(4) Each attorney must submit registration information by means of the ARDC online registration system or other means specified by the Administrator. Registration payments may be submitted online, by check sent through the mail to the address designated by the Administrator, or through other means authorized by the Administrator.

(5) Each attorney shall update required registration information within 30 days of any change, except for those attorneys relieved of the registration obligation pursuant to a provision of this rule.

(6) Except as otherwise provided in this rule or Supreme Court Rule 766, information disclosed pursuant to paragraphs (c) through (g) shall not be confidential.

(d) Disclosure of Trust Accounts. Each attorney shall identify any and all accounts maintained by the attorney during the preceding 12 months to hold property of clients or third persons in the attorney's possession in connection with a representation, as required pursuant to Rule 1.15(b)(a) of the Illinois Rules of Professional Conduct, by providing the account name, account number, and financial institution for each account. For each account, the attorney shall also indicate whether each account is an IOLTA account, as defined in Rule 1.15C(b)(i)(2) of the Illinois Rules of Professional Conduct. If an attorney does not maintain a trust account, the attorney shall state the reason why no such account is required.

(e) Disclosure of Malpractice Insurance.

(1) Each registering attorney, except for those registering pursuant to paragraphs (a)(2), (a)(3), (a)(5), and (k)(5) of this rule, shall disclose whether the attorney has malpractice insurance on the date of the registration and, if so, shall disclose the dates of coverage for the policy. If the attorney does not have malpractice insurance on the date of registration, the attorney shall state the reason why the attorney has no such insurance. The reason why the attorney does not have malpractice insurance shall be confidential. The Administrator may conduct random audits to assure the accuracy of information reported. Each attorney shall maintain, for a period of seven years from the date the coverage is reported, documentation showing the name of the insurer, the policy number, the amount of coverage and the term of the policy, and shall produce such documentation upon the Administrator's request.

(2) Every other year, beginning with registration for 2018, each attorney who discloses pursuant to paragraph (e)(1) that he or she does not have malpractice insurance and who is engaged in the private practice of law shall complete a self-assessment of the operation of his or her law practice or shall obtain malpractice insurance and report that fact, as a requirement of registering in the year following. The attorney shall conduct the self-assessment in an interactive online educational program provided by the Administrator regarding professional responsibility requirements for the operation of a law firm. The self-assessment shall require that the attorney demonstrate an engagement in learning about those requirements and that the attorney assess his or her law firm operations based upon those requirements. The self-assessment shall be designed to allow the attorney to earn four hours of MCLE professional responsibility credit and to provide the attorney with results of the self-assessment and resources for the attorney to use to address any issues raised by the self-assessment. All information related to the self-assessment shall be confidential, except for the fact of completion of the self-assessment, whether the information is in the possession of the Administrator or the attorney. Neither the Administrator nor the attorney may offer this information into evidence in a disciplinary proceeding. The Administrator may report self-assessment data publicly in the aggregate.

(f) Disclosure of Voluntary *Pro Bono* Service. Each attorney shall report the approximate amount of his or her *pro bono* legal service and the amount of qualified monetary contributions made during the preceding 12 months.

(1) *Pro bono* legal service includes the delivery of legal services or the provision of training without charge or expectation of a fee, as defined in the following subparagraphs:

(a) legal services rendered to a person of limited means;

(b) legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;

(c) legal services to charitable, religious, civic, or community organizations in matters in furtherance of their organizational purposes; and

(d) training intended to benefit legal service organizations or attorneys who provide *pro bono* services.

In a fee case, an attorney's billable hours may be deemed *pro bono* when the client and attorney agree that further services will be provided voluntarily. Legal services for which payment was expected, but is uncollectible, do not qualify as *pro bono* legal service.

(2) *Pro bono* legal service to persons of limited means refers not only to those persons whose household incomes are below the federal poverty standard, but also to those persons frequently referred to as the "working poor." Attorneys providing *pro bono* legal service need not undertake an investigation to determine client eligibility. Rather, a good-faith determination by the attorney of client eligibility is sufficient.

(3) Qualified monetary contribution means a financial contribution to an organization as enumerated in subparagraph (1)(b) which provides legal services to persons of limited means or which contributes financial support to such an organization.

(4) As part of the attorney's annual registration fee statement, the report required by subsection (f) shall be made by answering the following questions:

(a) Did you, within the past 12 months, provide any *pro bono* legal services as described in subparagraphs (1) through (4) below? ____ Yes ____ No

If no, are you prohibited from providing legal services because of your employment? ____ Yes ____ No

If yes, identify the approximate number of hours provided in each of the following categories where the service was provided without charge or expectation of a fee:

(1) hours of legal services to a person/persons of limited means;

(2) hours of legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;

(3) hours of legal services to charitable, religious, civic or community organizations in furtherance of their organizational purposes; and

(4) hours providing training intended to benefit legal service organizations or attorneys who provide *pro bono* services.

Legal services for which payment was expected, but is not collectible, do not qualify as *pro bono* services and should not be included.

(b) Have you made a monetary contribution to an organization which provides legal services to persons of limited means or which contributes financial support to such organization? ____ Yes ____ No

If yes, approximate amount: \$_____.

(5) Information provided pursuant to this subsection (f) shall be deemed confidential pursuant to the provisions of Rule 766, but the Commission may report such information in the aggregate.

(g) Practice Related Information. Each attorney shall provide the following practice related information:

(1) An address, e-mail address, and telephone number designated by the attorney as the attorney's listings on the master roll;

(2) The attorney's residential address, which shall be deemed to be the address required by paragraph (g)(1) above if the attorney has not provided such an address;

(3) The name of all other states of the United States in which the attorney is licensed to practice law; and

(4) For attorneys on active status and engaged in the practice of law, the type of entity at which the attorney practices law, the number of attorneys in that organization, the attorney's position within the entity, the attorney's managerial responsibilities within the entity, the principal areas of law in which the attorney practices, whether the entity has an ethics or compliance officer or general counsel, and whether that organization has established a written succession plan.

Information provided pursuant to paragraphs (g)(2) and (g)(4) of this rule shall be deemed confidential pursuant to this rule. Information pursuant to paragraph (g)(1) shall be confidential pursuant to this rule for an attorney registered pursuant to paragraph (a)(5) of this rule, on retirement status pursuant to paragraph (a)(6) of this rule, on inactive status pursuant to former Rule 770, on permanent retirement status pursuant to paragraph (a)(8) of this rule, or exempt from payment of a fee pursuant to paragraph (a)(3) of this rule. The Administrator may release confidential information pursuant to paragraph (g)(1) of this rule upon written application demonstrating good cause and the absence of risk of harm to the attorney. The Commission may report in the aggregate information made confidential by paragraph (g).

(h) Removal from the Master Roll. On or after February 1 of each year the Administrator shall remove from the master roll the name of any attorney who has not registered for that year. An attorney will be deemed not registered for the year if the attorney has not paid all required fees and has not provided the information required by paragraphs (c) through (g) of this rule. Any person whose name is not on the master roll and who practices law or who holds himself or herself out as being authorized to practice law pursuant to the attorney's Illinois law license is engaged in the unauthorized practice of law and may also be held in contempt of the Court.

(i) Reinstatement to the Master Roll. An attorney whose name has been removed from the master roll solely for failure to register pursuant to paragraph (h) of this rule, who has elected retirement status pursuant to paragraph (a)(6) of this rule, or whom the Supreme Court has ordered restored to active status pursuant to paragraph (a)(7) of this rule, may be reinstated to the master

roll as a matter of course upon registering and paying the registration fee prescribed for the year of registration, plus a reinstatement fee. The reinstatement fee shall be the sum of \$25 per month for each month that the attorney was removed from the master roll pursuant to paragraph (h) of this rule, was on retirement status pursuant to paragraph (a)(6) of this rule, or was on Court ordered inactive status as referenced in paragraph (a)(7) of this rule, up to a cap of \$600. The reinstatement fee shall include the fee for each month that an attorney was on any of these three statuses, but the total reinstatement amount due shall be capped at \$600, regardless of the amounts that would otherwise be due for the cumulative months on each such status.

(j) No Effect on Disciplinary Proceedings. The provisions of this rule pertaining to registration status shall not bar, limit, or stay any disciplinary investigations or proceedings against an attorney except to the extent provided in Rule 756(a)(8) regarding permanent retirement status.

(k) *Pro Bono* Authorization for Attorneys on Inactive or Retirement Status and Attorneys Admitted in Other States.

(1) Authorization to Provide *Pro Bono* Services. An attorney who is registered as inactive pursuant to Rule 756(a)(5) or who has elected retirement status pursuant to Rule 756(a)(6), or an attorney who is admitted in another state and is not disbarred or otherwise suspended from practice in any jurisdiction shall be authorized to provide *pro bono* legal services under the following circumstances:

(a) without charge or an expectation of a fee by the attorney;

(b) to persons of limited means or to organizations, as defined in paragraph (f) of this rule; and

(c) under the auspices of a sponsoring entity, which must be a not-for-profit legal services organization, governmental entity, law school clinical program, or bar association providing *pro bono* legal services as defined in paragraph (f)(1) of this rule.

(2) Duties of Sponsoring Entities. In order to qualify as a sponsoring entity, an organization must submit to the Administrator an application identifying the nature of the organization as one described in section (k)(1)(c) of this rule and describing any program for providing *pro bono* services which the entity sponsors and in which attorneys covered pursuant to paragraph (k) may participate. In the application, a responsible attorney shall verify that the program will provide appropriate training and support and malpractice insurance for volunteers and that the sponsoring entity will notify the Administrator as soon as any attorney authorized to provide services pursuant to this rule has ended his or her participation in the program. The organization is required to provide malpractice insurance coverage for any attorneys participating in the program and must inform the Administrator if the organization ceases to be a sponsoring entity under this rule.

(3) Procedure for Attorneys Seeking Authorization to Provide *Pro Bono* Services. An attorney admitted in Illinois who is registered as inactive or who is on retirement status, or an attorney who is admitted in another state but not Illinois, who seeks to provide *pro bono* services pursuant to this rule shall submit a statement to the Administrator so indicating, along with a verification from a sponsoring entity or entities that the attorney will be participating in a *pro bono* program under the auspices of that entity. An attorney who is seeking authorization based on admission in another state shall also disclose all other state admissions and whether

the attorney is the subject of any disbarment or suspension orders in any jurisdiction. The attorney's statement shall include the attorney's agreement that he or she will participate in any training required by the sponsoring entity and that he or she will notify the Administrator within 30 days of ending his or her participation in a *pro bono* program. Upon receiving the attorney's statement and the entity's verification, the Administrator shall cause the master roll to reflect that the attorney is authorized to provide *pro bono* services. That authorization shall continue until the end of the calendar year in which the statement and verification are submitted, unless the attorney or the sponsoring entity sends notice to the Administrator that the program or the attorney's participation in the program has ended.

(4) Renewal of Authorization. An attorney who has been authorized to provide *pro bono* services pursuant to this rule may renew the authorization on an annual basis by submitting a statement that he or she continues to participate in a qualifying program, along with verification from the sponsoring entity that the attorney continues to participate in such a program under the entity's auspices and that the attorney has taken part in any training required by the program. An attorney who is seeking renewal based on admission in another state shall also affirm that the attorney is not the subject of any disbarment or suspension orders in any jurisdiction.

(5) Annual Registration for Attorneys on Retirement Status. Notwithstanding the provisions of Rule 756(a)(6), an attorney on retirement status who seeks to provide *pro bono* services pursuant to this rule must register on an annual basis, but is not required to pay a registration fee or any deferred reinstatement fee pursuant to paragraph (i) of this rule.

(6) MCLE Exemption. The provisions of Rule 791 exempting attorneys from MCLE requirements by reason of being registered as inactive or on retirement status shall apply to attorneys on inactive or retirement status who are authorized to provide *pro bono* services pursuant to this rule, except that such attorneys shall participate in training to the extent required by the sponsoring entity.

(7) Disciplinary Authority. Attorneys admitted in another state who are providing legal services in this jurisdiction pursuant to this paragraph are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction, as provided in Rule 8.5 of the Rules of Professional Conduct of 2010. Any attorney who provides legal services pursuant to this rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

Adopted January 25, 1973, effective February 1, 1973; amended effective May 17, 1973, April 1, 1974, and February 17, 1977; amended August 9, 1983, effective October 1, 1983; amended April 27, 1984, and June 1, 1984, effective July 1, 1984; amended July 1, 1985, effective August 1, 1985; amended effective November 1, 1986; amended December 1, 1988, effective December 1, 1988; amended November 20, 1991, effective immediately; amended June 29, 1999, effective November 1, 1999; amended July 6, 2000, effective November 1, 2000; amended July 26, 2001, effective immediately; amended October 4, 2002, effective immediately; amended June 15, 2004, effective October 1, 2004; amended May 23, 2005, effective immediately; amended September 29, 2005, effective immediately; amended June 14, 2006, effective immediately; amended September 14, 2006, effective immediately; amended March 26, 2008, effective July 1, 2008; amended July 29, 2011, effective September 1, 2011;

amended June 5, 2012, eff. immediately; amended June 21, 2012, eff. immediately; amended Nov. 28, 2012, eff. immediately; amended Apr. 8, 2013, eff. immediately; amended June 18, 2013, eff. July 1, 2013; amended March 20, 2014, eff. immediately; amended June 23, 2014, eff. immediately; amended Feb. 2, 2015, eff. immediately; amended May 27, 2015, eff. June 1, 2015; amended Apr. 1, 2016, eff. immediately; amended June 15, 2016, eff. immediately; amended Jan. 25, 2017, eff. immediately; amended May 25, 2018, eff. immediately; amended June 14, 2021, eff. July 1, 2021; amended Sept. 21, 2021, eff. Jan. 1, 2022; amended Oct. 24, 2022, eff. immediately; amended July 6, 2023, eff. immediately.

Amended Rule 1.0

RULE 1.0: TERMINOLOGY

(a) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

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

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

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

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

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

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

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

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

(k) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances

to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

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

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

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

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

Comment

Confirmed in Writing

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

Firm

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

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a

subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

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

Fraud

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

Informed Consent

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

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client’s or other person’s silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. Rule 1.5(f)(e) requires that a person’s consent be confirmed in writing. For a definition of “writing” and “confirmed in writing,” see paragraphs (n) and (b). Other Rules require that a client’s consent be obtained in a writing signed by the client. See Rules

1.5(d)(2) and (d)(5) and (e), Rule 1.8(a) and (g). For a definition of “signed,” see paragraph (n).

Screened

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

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

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

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended July 6, 2023, eff. immediately.

Amended Rule 1.1

RULE 1.1: COMPETENCE

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

Adopted July 1, 2009, effective January 1, 2010.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer’s general experience, the lawyer’s training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the

matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are 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. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Retaining Or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2(e) and Comment [15], 1.4, 1.5(f)(e), 1.6, and 5.5(a). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience, and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended July 6, 2023, eff. immediately.

Amended Rule 1.16

RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

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

- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

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

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

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

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

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

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

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client Upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

Refund of Unearned Fees

[10] See ~~Comments [3B] through [3D] to Rule 1.15~~ Rule 1.5(c) and (d), Comments [3] through [7] to Rule 1.5, and Rule 1.16(d).

Adopted July 1, 2009, effective January 1, 2010; amended July 6, 2023, eff. immediately.

Amended Rule 7.2

RULE 7.2: ADVERTISING

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

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer 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 lawyer referral service;
- (3) pay for a law practice in accordance with Rule 1.17; and
- (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement

not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

- (i) the reciprocal referral agreement is not exclusive, and
- (ii) the client is informed of the existence and nature of the agreement.

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

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Except as permitted under paragraphs (b)(1)-(b)(4), lawyers are not permitted to pay others

for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer 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. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(f)(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers; Rule 8.4(a) for the duty to avoid violating the Rules through the acts of another.

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit lawyer referral service.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(f)(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule

by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

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