

On Monday, February 25, 2013, the Rules Committee met in the Supreme Court courtroom from 10:00 a.m. to 3:53p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. JON M. ALANDER
HON. BARBARA N. BELLIS
HON. WILLIAM M. BRIGHT, JR.
HON. JULIETT L. CRAWFORD
HON. KARI A. DOOLEY
HON. RICHARD W. DYER
HON. MAUREEN M. KEEGAN
HON. ELIOT D. PRESCOTT

Also in attendance were Attorneys Denise K. Poncini and Joseph J. Del Ciampo of the Judicial Branch's Legal Services Unit.

1. The Committee unanimously approved the minutes of the meeting held on December 17, 2012.

2. The Committee considered a proposal by Judge Douglas C. Mintz, Chair of the Bench/Bar Foreclosure Committee, to amend Section 6-3 to allow the certificate of judgment issued by the clerk to be used in cases under CGS § 49-17 and comments on the proposal by Attorney Denis Caron. After brief discussion, the Committee tabled the matter.

3. The Committee considered a proposal by Judge Carol A. Wolven, Chief Administrative Judge for Juvenile Matters, to amend Section 35a-18.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 35a-18, as amended by the Committee, as set forth in Appendix A (attached).

4. The Committee considered letters from Attorneys Hurd Baruch, Charles F. Tucker and John Kreitler concerning the attorney registration requirement in Section 2-27(d). The Committee also invited Statewide Bar Counsel Michael Bowler, who was present in the gallery, to speak on this matter.

After discussion, the Committee asked Attorney Bowler to draft a proposed rule which provides for permanent retirement status for the Committee's consideration at its March meeting.

5. The Committee considered a proposal by Judge William M. Bright, Jr. to amend Section 2-55

to allow retired attorneys to do pro bono work under certain circumstances and a letter commenting on the proposal from Attorney Patricia King, Chief Disciplinary Counsel.

After brief discussion, the Committee tabled the matter.

6. The Committee considered a proposal submitted by Judge Linda Lager, Chief Administrative Judge for Civil Matters, on behalf of the civil presiding judges and the Civil Commission to amend Section 14-8 concerning the certificate of closed pleadings.

After discussion, the Committee voted to send this item to Judge Barbara M. Quinn, Chief Court Administrator and to Judges Marshall K. Berger and Henry S. Cohn to review in conjunction with Item #8 of these minutes which also proposed an amendment to Section 14-8, in order to create a new draft of Section 14-8 which unifies the language of both agenda items for the consideration of the Committee at its March meeting.

7. The Committee considered a proposal by the Connecticut Bar Association (CBA) to amend Rule 3.8 of the Rules of Professional Conduct concerning the ethical responsibilities of prosecutors dealing with new and credible evidence creating a reasonable probability that a convicted defendant did not commit the offense.

After brief comments by Attorney John Logan, Chair of the Professional Ethics Committee of the Connecticut Bar Association, who was present and invited to speak, and brief discussion by the Committee, the Committee voted to refer the matter to the Criminal Commission.

8. The Committee considered proposals submitted by Judge Barbara M. Quinn, Chief Court Administrator, to amend the rules concerning administrative appeals filed under C.G.S. Sec. 4-183, and to amend the commentary to Section 1-10B to ensure that persons wishing to observe a proceeding where courtroom spectator capacity is exceeded may have the opportunity to do so in a room in which a contemporaneous closed-circuit video transmission of the proceeding is provided.

After discussion, the Committee voted to refer the portion of the proposal pertaining to administrative appeals to the Civil Commission for review in conjunction with Item #6 of these minutes. The Committee unanimously voted to submit to public hearing the amendment to the commentary to Section 1-10B as set forth in Appendix B (attached).

9. The Committee considered a recommendation of the Legal Specialization Screening Committee that the National Association of Counsel for Children be approved for recertification as a certifier in the specialty area of Child Welfare law.

After brief discussion, the Committee unanimously voted to approve the recertification of the National Association of Counsel for Children as a certifier in the specialty area of Child Welfare law,

retroactive to January 14, 2013.

10. The Committee considered a letter from Attorney Bradoc Gallant, then CBA President, concerning the addition of elder law to Rule 7.4A of the Rules of Professional Conduct as a field of law in which attorneys may be certified as specialists.

After discussion, the Committee voted to table the matter.

11. The Committee considered a proposal by Statewide Bar Counsel Michael Bowler and Chief Disciplinary Counsel Patricia King to amend Section 2-53 concerning applications for reinstatement to the bar.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 2-53, as amended by the Committee, as set forth in Appendix C (attached).

12. The Committee considered a proposal by Thomas Gaffey, Chief Counsel for the Office of the Probate Court Administrator, to amend the commentary to Section 1-1 of the Code of Evidence concerning the code's applicability to the Probate Court.

After discussion, the Committee voted to refer the matter to the Evidence Oversight Committee.

13. The Committee considered a proposal submitted by Judge Linda K. Lager on behalf of the Civil Commission to adopt standard interrogatories and requests for production related to workers' compensation claims and proposals concerning this submitted by Assistant Attorney General Lawrence G. Widem.

After discussion, the Committee unanimously voted to submit to public hearing the standard interrogatories and requests for production related to workers' compensation claims as set forth in Appendix D (attached).

14. The Committee considered a proposal by the CBA to amend the Rules of Professional Conduct and to adopt a new Practice Book section to permit the practice of law pending admission to the bar in this state under certain circumstances and comments from Patricia A. King, Chief Disciplinary Counsel, with regard to the proposal concerning the practice of law pending admission to the bar in this state.

Prior to discussion, items 2 and 3 of the proposal were tabled for discussion at a later meeting. After discussion, the Committee unanimously voted to submit to public hearing the proposed commentary to Rule 1.10 as set forth in Appendix E (attached). The Committee unanimously voted to submit to public hearing the amendments to Rules 1.0, 1.1, 1.4, 1.6, 1.17 and 4.4 as set forth in Appendix F (attached).

15. The Committee considered a proposal by Judge Barbara M. Quinn, Chief Court

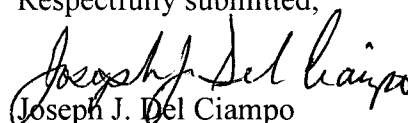
Administrator, to amend the rules to provide for limited scope representation and comments on the proposal from the bench and bar. In connection with this proposal, Judge Edward Ginsburg and Attorney Edward Notis-McConarty from Massachusetts addressed the Committee on the Massachusetts experience with “limited assistance representation.” Additionally, Judge Lynda B. Munro, Chief Administrative Judge for Family Matters, was also present and asked questions of Judge Ginsburg and Attorney Notis-McConarty.


After discussion, a subcommittee of Judges William M. Bright, Jr. and Jon M. Alander was formed to revise the proposal for Limited Scope Representation in accordance with the Committee’s discussion for the consideration of the Committee at its March meeting.

16. The Committee considered a report of the Rules Committee Task Force to Study Minimum Continuing Legal Education. Statewide Bar Counsel Michael Bowler addressed the Committee concerning this report.

After discussion, the Committee asked Attorney Bowler to draft a proposed rule to implement the proposed Legal Skills Course for the consideration of the Committee at its March meeting. Additionally, the Committee decided to invite Judge Solomon, Chair of the Task Force to Study Minimum Continuing Legal Education, to attend the March meeting and be available to answer the questions of Committee members.

Respectfully submitted,


Joseph J. Del Ciampo
Counsel, Legal Services


Denise K. Poncini
Counsel, Legal Services

APPENDIX A (022513 mins)

Sec. 35a-18. Opening Default

Any order or decree entered through a default may be set aside within four months succeeding the date of such entry of the order or decree upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a defense in whole or in part existed at the time of the rendition of such order or of such decree, and that the party so defaulted was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same, except that no such order or decree shall be set aside if a final decree of adoption regarding the child has been issued prior to the filing of any such motion. Such written motion shall be verified by the oath of the complainant, and shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the party failed to appear. The judicial authority shall order reasonable notice of the pendency of such motion to be given to all parties to the action[,] and also, in the case of a motion to set aside a judgment terminating parental rights, to any person who has legal custody of the child or who has physical custody of the child pursuant to an agreement, including an agreement with the Department of Children and Families or a licensed child-placing agency. The judicial authority [and] may enjoin enforcement of such order or decree until the decision upon such written motion, unless said action shall prejudice or place the child's or youth's health, safety or welfare in jeopardy. [A] The initial hearing on said motion shall be held as a priority matter but no later than fifteen days after the same has been filed with the clerk, unless otherwise agreed to by the parties and sanctioned by the judicial authority. All hearings on motions to set aside a judgment terminating parental rights shall be conducted in accordance with the provisions of General Statutes § 45a-719. In the event that [said] any motion is granted the matter shall be scheduled for an immediate pretrial or case status conference within fourteen days thereof, and failing a resolution at that time, then the matter shall be scheduled for a trial as expeditiously as possible.

COMMENTARY: To alert practitioners and the judicial authority to the special prohibition against opening termination of parental rights judgments pursuant to General Statutes § 45a-719.

APPENDIX B (022513 mins)

Sec. 1-10B. Media Coverage of Court Proceedings; In General

(a) The broadcasting, televising, recording or photographing by the media of court proceedings and trials in the superior court should be allowed subject to the limitations set out in this section and in Sections 1-11A through 1-11C, inclusive.

(b) No broadcasting, televising, recording or photographing of any of the following proceedings shall be permitted:

(1) Family relations matters as defined in General Statutes § 46b-1;

(2) Juvenile matters as defined in General Statutes § 46b-121;

(3) Proceedings involving sexual assault;

(4) Proceedings involving trade secrets;

(5) In jury trials, all proceedings held in the absence of the jury unless the trial court determines that such coverage does not create a risk to any party's rights or other fair trial risks under the circumstances;

(6) Proceedings which must be closed to the public to comply with the provisions of state law;

(7) Any proceeding that is not held in open court on the record.

(c) No broadcasting, televising, recording or photographic equipment permitted under these rules shall be operated during a recess in the trial.

(d) No broadcasting, televising, recording or photographing of conferences involving counsel and the trial judge at the bench or involving counsel and their clients shall be permitted.

(e) There shall be no broadcasting, televising, recording or photographing of the process of jury selection nor of any juror.

COMMENTARY: The Judicial Branch may provide, at its discretion, within a court facility, a contemporaneous closed-circuit video transmission of any court proceeding for the benefit of media or other spectators, and such a transmission shall not be considered broadcasting or televising by the media under this rule.

APPENDIX C (022513 mins)

Sec. 2-53. Reinstatement after Suspension, Disbarment or Resignation

(a) [No application for reinstatement or readmission shall be considered by the court unless the applicant, among other things, states under oath in the application that he or she has successfully fulfilled all conditions imposed on him or her as a part of the applicant's discipline. However, if an applicant asserts that a certain condition is impossible to fulfill, he or she may apply, stating that assertion and the basis therefor. It is the applicant's burden to prove at the hearing on reinstatement or readmission the impossibility of the certain condition. Any application for reinstatement or readmission to the bar shall contain a statement by the applicant indicating whether such applicant has previously applied for reinstatement or readmission and if so, when. The application shall be referred, by the court to which it is brought, to the standing committee on recommendations for admission to the bar that has jurisdiction over the judicial district court location in which the applicant was suspended or disbarred or resigned, and notice of the pendency of such application shall be given to the state's attorney of that judicial district, the chair of the grievance panel whose jurisdiction includes that judicial district court location, the statewide grievance committee, the office of the chief disciplinary counsel, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned, and it shall also be published in the Connecticut Law Journal.] An attorney who has been suspended from the practice of law in this state for a period of one year or more shall be required to apply for reinstatement in accordance with this section, unless the court that imposed the discipline expressly provided in its order that such application is not required. An attorney who has been suspended for less than one year need not file an application for reinstatement pursuant to this section, unless otherwise ordered by the court at the time the discipline was imposed.

(b) [The standing committee on recommendations shall investigate the application, hold hearings pertaining thereto and render a report with its recommendations to the court. It shall take all testimony at its hearings under oath and shall include in its report subordinate findings of facts and conclusions as well as its recommendation. The standing committee shall have a record made of its proceedings which shall include a copy of the application for reinstatement or readmission, a transcript of its hearings thereon, any exhibits received by the committee, any other documents considered by the committee in making its recommendations, and copies of all notices provided by the committee in accordance with this section.] An attorney who was disbarred or resigned

shall be required to apply for reinstatement pursuant to this section, but shall not be eligible to do so until after five years from the effective date of disbarment or acceptance by the court of the resignation, unless the court that imposed the discipline expressly provided a shorter period of disbarment or resignation in its order. No attorney who has resigned from the bar and waived the privilege of applying for readmission or reinstatement to the bar at any future time shall be eligible to apply for readmission or reinstatement to the bar under this rule.

(c) [The court shall thereupon inform the chief justice of the supreme court of the pending application and report, and the chief justice shall designate two other judges of the superior court to sit with the judge presiding at the session. Such three judges, or a majority of them, shall determine whether the application should be granted.] In no event shall an application for reinstatement by an attorney disbarred pursuant to the provisions of Section 2-47A be considered until after twelve years from the effective date of the disbarment. No such application may be granted unless the attorney provides satisfactory evidence that full restitution has been made of all sums found to be knowingly misappropriated, including but not limited to restitution to the client security fund for all claims paid resulting from the attorney's dishonest misconduct.

(d) [The standing committee shall notify the presiding judge, no later than fourteen days prior to the court hearing, if the committee will not be represented by counsel at the hearing and, upon such notification, the presiding judge may appoint, in his or her discretion, an attorney to review the issue of reinstatement and report his or her findings to the court. The attorney so appointed shall be compensated in accordance with a fee schedule approved by the executive committee of the superior court.] Unless otherwise ordered by the court, an application for reinstatement shall not be filed until:

(1) The applicant is in compliance with Sections 2-27(d), 2-70 and 2-80;

(2) The applicant is no longer the subject of any pending disciplinary proceedings or investigations;

(3) The applicant has passed the Multistate Professional Responsibility Examination not more than six months prior to the filing of the application;

(4) The applicant has successfully completed any criminal sentence including, but not limited to, a sentence of incarceration, probation, parole, supervised release, or period of sex offender registration and has fully complied with any orders regarding conditions, restitution, criminal penalties or fines;

(5) The applicant has fully complied with all conditions imposed pursuant to the order of discipline. If an applicant asserts that a certain disciplinary condition is impossible to fulfill, he or

she must apply to the court that ordered the condition for relief from that condition prior to filing an application for reinstatement;

(6) The bar examining committee has received an application fee. The fee shall be established by the chief court administrator and shall be expended in the manner provided by Section 2-22 of these rules.

(e) [The applicant shall pay to the bar examining committee \$200 and shall submit proof of such payment to the clerk of the superior court at the time the application is filed with the court. This sum shall be expended in the manner provided by Section 2-22 of these rules. If the petition for readmission or reinstatement is denied, the reasons therefor shall be stated on the record or put in writing. The attorney may not reapply for six months following the denial.] An application for reinstatement shall be filed with the clerk of the superior court in the jurisdiction that issued the discipline. The application shall be filed under oath and on a form approved by the office of the chief court administrator. The application shall be accompanied by proof of payment of the application fee to the bar examining committee.

(f) [An attorney who has been suspended from the practice of law in this state for a period of one year or more shall be required to apply for reinstatement in accordance with this section, unless the court that imposed the discipline specifically provided in its order that such application is not required. An attorney who has been suspended for less than one year need not file an application for reinstatement, unless otherwise ordered by the court at the time the discipline was imposed.] The application shall be referred by the clerk of the superior court where it is filed to the chief justice or designee, who shall refer the matter to a standing committee on recommendations for admission to the bar whose members do not maintain their primary office in the same judicial district as the applicant.

(g) [In no event shall an application for reinstatement by an attorney disbarred pursuant to the provisions of Section 2-47A be considered until after twelve years from the date of the order disbarring the attorney. No such application may be granted unless the attorney provides satisfactory evidence that full restitution has been made of all sums found to be knowingly misappropriated.] The clerk of the superior court shall give notice of the pendency of the application to the state's attorney of that court's judicial district, the grievance counsel to the grievance panel whose jurisdiction includes that judicial district court location, the statewide grievance committee, the office of the chief disciplinary counsel, the client security fund committee, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned. The clerk shall also promptly publish notice on

the judicial branch website, in the Connecticut Law Journal, and in a newspaper with substantial distribution in the judicial district where the application was filed.

(h) Within sixty days of the referral from the chief justice to a standing committee, the statewide grievance committee and the office of the chief disciplinary counsel shall file a report with the standing committee, which report may include additional relevant information, commentary in the information provided in the application and recommendations on whether the applicant should be reinstated. Both the statewide grievance committee and the office of the chief disciplinary counsel may file an appearance and participate in any investigation into the application and at any hearing before the standing committee, and at any court proceeding thereon.

(i) The standing committee shall investigate the application, hold hearings pertaining thereto and render a report with its recommendations to the court. The standing committee shall give written notice of all hearings to the state's attorney of the court's judicial district, the grievance counsel to the grievance panel whose jurisdiction includes that judicial district location where the application was filed, the statewide grievance committee, the office of the chief disciplinary counsel, the client security fund committee, the attorney or attorneys appointed by the court pursuant to Section 2-64, and to all complainants whose complaints against the attorney resulted in the discipline for which the attorney was disbarred or suspended or resigned. The standing committee shall also publish all hearing notices on the judicial branch website, in the Connecticut Law Journal and in a newspaper with substantial distribution in the county where the application was filed.

(j) The standing committee shall take all testimony at its hearings under oath and shall include in its report subordinate findings of facts and conclusions as well as its recommendation. The standing committee shall have a record made of its proceedings which shall include a copy of the application for reinstatement, any reports filed by the statewide grievance committee and office of the chief disciplinary counsel, a copy of the record of the applicant's disciplinary history, a transcript of its hearings thereon, any exhibits received by the standing committee, any other documents considered by the standing committee in making its recommendations, and copies of all notices provided by the standing committee in accordance with this section. Record materials containing personal identifying information or medical information may, in the discretion of the standing committee, be redacted, or open for inspection only to persons having a proper interest therein and upon order of the court. The standing committee shall complete work on the application within 180 days of referral from the chief justice. It is the applicant's burden to demonstrate by clear and convincing evidence that he or she possesses good moral character and fitness to practice law as defined by Section 2-5A.

(k) Upon completion of its investigation, the standing committee shall file its recommendation in writing together with a copy of the record with the clerk of the superior court. The report shall recommend that the application be granted, granted with conditions, or denied.

(l) The court shall thereupon inform the chief justice of the pending application and recommendation, and the chief justice shall designate two other judges of the superior court to sit with the judge presiding at the session. The applicant, the statewide grievance committee, the office of the chief disciplinary counsel and the standing committee shall have an opportunity to appear and be heard at any hearing. The three judge panel, or a majority of them, shall determine whether the application should be granted.

(m) If the application for reinstatement is denied, the reasons therefor shall be stated on the record or put in writing. Unless otherwise ordered by the court, the attorney may not reapply for reinstatement for a period of at least one year following the denial.

COMMENTARY: These proposed rule changes establishes a consistent application and process for suspended, disbarred, or resigned attorneys who wish to apply for reinstatement. The process will place the burden on the applicant to prepare a thorough, uniform application for reinstatement before it is submitted to the standing committee and the court for and investigation.

Subsection (a) moves the language in the current subsection (f) to subsection (a).

Subsection (b) places a minimum waiting time of five years on those attorneys who have been disbarred or resigned when the court did not provide a specific time frame for the discipline.

Subsection (c) moves the language from current subsection (g) to subsection (c). It also makes clear that an attorney who has resigned and waived the right to apply for reinstatement cannot use this rule to apply for reinstatement.

Subsection (d) creates a uniform application process for attorneys applying for reinstatement. The process also prohibits attorneys who are not in compliance with Sections 2-27(d), 2-70 or 2-80 from applying for reinstatement. Currently attorneys who 1) have not registered when suspended, have failed to pay the Client Security Fund fee, and have failed to make full restitution to the Client Security Fund, 2) are under a pending disciplinary investigation, or 3) have not completed all of the conditions of a criminal sentence can still apply for reinstatement to the Connecticut Bar. This would end that practice. It would also require applicants to take and pass the MPRE and requires them to open their disciplinary case to have a condition removed, if it is impossible to complete. A uniform application also places the burden on the applicant to disclose credit problems, criminal history, mental health and substance abuse problems, employment history, prior residences, references and rehabilitation efforts (including CLE and community service) in advance of a hearing before the standing committee. Currently,

the burden was on the standing committee to affirmatively ask for this information, if the applicant had not provided it. The standing committee as a volunteer committee, has limited resources to independently investigate an application. This would place the burden back on the applicant to have a continuing duty to disclose this information.

This proposed application process is similar to the reinstatement process in New York as well as the current investigation the Connecticut Bar Examining Committee performs for new applicants to the Connecticut bar.

Subsection (e) describes where the application would be filed. It also changes the application fee from \$200 to an amount set by the Chief Court Administrator.

Subsection (f) contains language from current subsection (a). It also prevents a standing committee with attorneys who work in the judicial district where the applicant worked as an attorney from investigating the application.

Subsection (g) contains language from previous subsection (a). It also requires the clerk to publish notice on the website and in a newspaper so that the general public might become aware of a reinstatement application.

Subsection (h) clarifies the role of the statewide grievance committee and the disciplinary counsel in helping to investigate the application and allows them to provide a report to the standing committee and participate in all of the proceedings.

Subsection (i) contains language from current subsection (b). It also requires the standing committee to send notice to interested parties and publish notice of its hearings in a manner similar to the clerk of the court's initial publication and notice requirements.

Subsection (j) contains language from current subsection (b). It also provides the standing committee with a timeframe of 180 days to complete its work. It codifies that the burden of proof is on the applicant to prove fitness to practice law and good and moral character.

Subsection (k) contains language from current subsection (b). It also clarifies that the standing committee shall make a recommendation that the application be granted, granted with conditions, or denied.

Subsection (l) contains language from current subsection (c). It also clarifies who may appear at the hearing.

Subsection (m) contains language from current subsection (e). It changes the timeframe to submit a new application for reinstatement from six months to one year if the prior application has been denied.

APPENDIX D (022513 mins)

Proposed Discovery Related to Workers' Compensation Benefits in Personal Injury Cases

I. Add two question to the standard interrogatories for the plaintiff in a personal injury case (Form 202):

- Did you make a claim for worker's compensation benefits as a result of the incident/occurrence alleged in the complaint?
- Did you receive workers' compensation benefits as a result of the incident/occurrence alleged in the complaint?

COMMENTARY: These two questions would be added to the existing standard interrogatories to identify situations in which a plaintiff has applied for and received workers' compensation benefits. If compensation benefits were paid, then the supplemental interrogatories and request for production may be served on the plaintiff without leave of the court if the compensation carrier does not intervene in the action.

II. Supplemental discovery to be served on a plaintiff who has received workers' compensation benefits when there is no intervening plaintiff

A. Interrogatories

1. State your full name, home address, and business address.
2. State the workers' compensation claim number and the date of injury of each workers' compensation claim that you have filed as a result of the incident/occurrence alleged in the complaint.
3. State the total amount paid on your behalf on each of the claims filed as a result of the incident/occurrence alleged in the complaint and referred to in interrogatory number two, and if known, specify the amount of medical benefits, loss of income benefits, and specific award benefits, and if unknown, provide an authorization for the same.
4. Identify any First Report of Injury, Notice of Claim for Compensation, Notice of Intention to Reduce or Discontinue Benefits, Notice to Compensation Commissioner and Employee of Intention to Contest Employee's Right to Compensation Benefits, and any reports of medical exams requested by the commissioner, respondent and/or employer arising out of the incident/occurrence alleged in the complaint.
5. Identify any voluntary agreements, approved stipulations to date, approved full and final stipulations and findings and awards, and findings and denials arising out of the incident/occurrence alleged in the complaint and which formed the basis for your answer to interrogatory three.
6. Which of your claims arising out of the incident/occurrence alleged in the complaint and referenced in your answer to interrogatory number two are still open?

B. Requests for Production:

1. Produce a copy of the First Report of Injury (Form FRI), Notice of Claim for Compensation (Form 30C), Notice of Intention to Reduce or Discontinue Benefits (Form 36), and Notice to Compensation Commissioner and Employee of Intention to Contest Employee's Right to Compensation Benefits (Form 43).
2. Produce a copy of all of the approved voluntary agreements, approved stipulations to date, approved full and final stipulations, findings and awards, and findings and denials that relate to one or more of the claims referenced in your answer to interrogatory number two.
3. Produce a copy of all reports of medical exams requested by the commissioner, respondent and/or employer that were prepared concerning any of the claims referenced in your answer to interrogatory number two.
4. If you are unable to specify the amount of medical benefits, loss of income benefits, and specific award benefits paid on your behalf, provide an authorization for the same.

COMMENTARY: These supplemental interrogatories and requests for production are specifically directed at eliciting information about any workers' compensation claims, benefits and agreements. Unless the compensation carrier is a party to the action, it can be difficult to obtain this information. Often the plaintiff's lawyers do not represent the client in the worker's compensation case, and although this information is available in the worker's compensation file, providing these records to lawyers not involved in the compensation case could be time-consuming for the workers' compensation office staff. If compensation benefits were paid, these supplemental interrogatories and requests for production may be served on the plaintiff without leave of the court if there is no intervening plaintiff in the action.

III. Standard Interrogatories to be directed to the intervening plaintiff. A.

Interrogatories

1. State the name, business address, business telephone number, business e-mail address and relationship to the workers' compensation lien holder of the person answering these interrogatories.
2. State the workers' compensation claim number and date of injury of each workers' compensation claims that gave rise to the lien asserted by the workers' compensation lien holder.
3. State the total amount paid on each claim referenced in the answer to interrogatory number two, specifying the amount of medical benefits, loss of income benefits, and specific award benefits paid.
4. Identify any First Report of Injury, Notice of Claim for Compensation, Notice of Intention to Reduce or Discontinue Benefits, Notice to Compensation Commissioner and Employee of Intention to Contest Employee's Right to Compensation Benefits, and any reports of medical exams requested by the commissioner, respondents and/or employer arising out of the incident/occurrence alleged in the complaint.
5. Identify all voluntary agreements, approved stipulations to date, approved full and final stipulations and findings and awards, and findings and denials.

6. Identify the claims referenced in your answer to interrogatory number two that are still open.

B. Requests for Production:

1. Produce a copy of the First Report of Injury (Form FRI), Notice of Claim for Compensation (Form 30C), Notice of Intention to Reduce or Discontinue Benefits (Form 36), and Notice to Compensation Commissioner and Employee of Intention to Contest Employee's Right to Compensation Benefits (Form 43).
2. Produce a copy of all of the approved voluntary agreements, approved stipulations to date, approved full and final stipulations, findings and awards, and findings and denials that relate to one or more of the claims referenced in your answer to interrogatory number two.
3. Produce a copy of all reports of medical exams requested by the commissioner, respondent and/or employer that were prepared concerning any of the claims referenced in your answer to interrogatory number two.
4. Produce a copy of your workers' compensation lien calculations.

COMMENTARY: These standard interrogatories and requests for production are intended to tailor the discovery from the intervening compensation carrier to the limited role and limited material information in the workers' compensation lien holder's file. The existing standard interrogatories and requests for production directed to plaintiffs place an unnecessary burden on the parties, result in discovery disputes, and require the compensation carrier to produce information and documentation, in many instances, that is duplicative of the responses engendered by the same interrogatories and requests for production served upon the plaintiff in the case.

APPENDIX E (022513mins)

Rule 1.10. Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless:

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

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

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

(B) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's 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

(C) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer 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 a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

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

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

(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 lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

COMMENTARY: Definition of "Firm." For purposes of the Rules of Professional Conduct,

the term "firm" denotes 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. See Rule 1.0 (d). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0 and its Commentary.

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

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

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

Rule 1.10 (b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the

formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9 (c).

Rule 1.10 (c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7 (b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7 and its Commentary. For a definition of informed consent, see Rule 1.0 (f).

Rule 1.10 (a) (2) similarly removes the imputation otherwise required by Rule 1.10 (a), but unlike section (c), it does so without requiring that there be informed consent by the former client. Instead, it requires that the procedures laid out in sections (a) (2) (i)-(iii) be followed. A description of effective screening mechanisms appears in Rule 1.0 (l) and Official Commentary thereto. Lawyers should be aware, however, that, even where screening mechanisms have been adopted, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation.

Paragraph (a) (2) (i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

The notice required by paragraph (a) (2) (ii) generally should include a description of the screened lawyer's prior representation and be given as soon as practicable after the need for screening becomes apparent. It also should include a statement by the screened lawyer and the firm that the client's material confidential information has not been disclosed or used in violation of the Rules. The notice is intended to enable the former client to evaluate and comment upon the effectiveness of the screening procedures.

The certifications required by paragraph (a) (2) (iii) give the former client assurance that the client's material confidential information has not been disclosed or used inappropriately, either prior to timely implementation of a screen or thereafter. If compliance cannot be certified, the certificate must describe the failure to comply.

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

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

AMENDMENT NOTE: The above change is taken from paragraphs 7 through 10 of the commentary to Rule 1.10 of the ABA Model Rules of Professional Conduct.

APPENDIX F (022513 mins)

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) "Client" or "person" as used in these Rules includes an authorized representative unless otherwise stated.

(c) "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 subsection (f) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

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

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

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

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

(h) "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.

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

(j) "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.

(k) "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.

(l) "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.

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

(n) "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.

(o) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and [e-mail] 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.

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

Firm. Whether two or more lawyers constitute a firm within paragraph (d) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of 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.

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.

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. 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. 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.

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

Screened. The definition of "screened" applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.11, 1.12 or 1.18.

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 shall acknowledge in writing to the client 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 [materials] 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 [materials] 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.

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.

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.

(P.B. 1978-1997, Rule 1.1.)

COMMENTARY: Legal Knowledge and Skill. 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.

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.

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. 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. 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).

Maintaining Competence. 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.

Rule 1.4. Communication

(a) A lawyer shall:

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

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

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

(4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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

(P.B. 1978-1997, Rule 1.4.) (Amended June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client. If these Rules or other law require that a particular decision about the representation be made by the client, subsection (a) (1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action. See Rule 1.2 (a).

Subsection (a) (2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, subsection (a) (3) requires that the lawyer keep the client reasonably informed about the status of

the matter, such as significant developments affecting the timing or the substance of the representation.

A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, subsection (a) (4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. [Client telephone calls should be promptly returned or acknowledged.] A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters. The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation, a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0 (f).

Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, when the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information. In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the

examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4 (3) directs compliance with such rules or orders.

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to 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 subsection (b), (c), or (d).

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

(c) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary to:

(1) Prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another;

(2) Prevent, mitigate or rectify the consequence of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used;

(3) Secure legal advice about the lawyer's compliance with these Rules;

(4) Comply with other law or a court order.

(5) Detect and resolve conflicts of interest arising from the lawyer'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 attorney-client privilege or otherwise prejudice the client.

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

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

(P.B. 1978-1997, Rule 1.6.)

COMMENTARY: This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule

1.9 (c) (2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8 (b) and 1.9 (c) (1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0 (f) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

The principle of client-lawyer confidentiality is given effect by related bodies of law, the attorney-client privilege, the work product doctrine and the Rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The Rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality Rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

Subsection (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure. Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the

course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specific lawyers.

Disclosure Adverse to Client. Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality Rule is subject to limited exceptions. Subsection (b) recognizes the overriding value of life and physical integrity and requires disclosure in certain circumstances.

Subsection (c) (1) is a limited exception to the Rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0 (e), that is likely to result in substantial injury to the financial or property interests of another. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although subsection (c) (1) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2 (d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13 (c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

Subsection (c) (2) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Subsection (c) (2) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, subsection (c) (3) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct. The lawyer's right to disclose such information to a second lawyer pursuant to subsection (c) (3) does not give the second lawyer the duty or right to disclose such

information under subsections (b), (c) and (d). The first lawyer's client does not become the client of the second lawyer just because the first lawyer seeks the second lawyer's advice under (c) (3).

Subsection (c) (5) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, subsection (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules. Any information disclosed pursuant to subsection (c) (5) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Subsection (c) (5) does not restrict the use of information acquired by means independent of any disclosure pursuant to subsection (c) (5). Subsection (c) (5) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The

lawyer's right to respond arises when an assertion of such complicity has been made. Subsection (d) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

A lawyer entitled to a fee is permitted by subsection (d) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, subsection (c) (4) permits the lawyer to make such disclosures as are necessary to comply with the law.

A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, subsection (c) (4) permits the lawyer to comply with the court's order.

Subsection (b) requires and subsection (c) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

Subsection (c) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in subsections (c) (1) through (c) (4). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the

nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by subsection (c) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by subsection (b). See Rules 1.2 (d), 4.1 (b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3 (c).

Acting Competently to Preserve Confidentiality. Subsection (c) requires a [A] lawyer [must] to act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of subsection (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Official Commentary.

When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement

special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Former Client. The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9 (c) (2). See Rule 1.9 (c) (1) for the prohibition against using such information to the disadvantage of the former client.

Rule 1.17. Sale of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied:

- (a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in Connecticut;
- (b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;
- (c) The seller gives written notice to each of the seller's clients regarding:
 - (1) the proposed sale;
 - (2) the client's right to retain other counsel or to take possession of the file; and
 - (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.
- (d) The fees charged clients shall not be increased by reason of the sale.

(Adopted June 26, 2006, to take effect Jan. 1, 2007.)

COMMENTARY: The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller. The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or

the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation.

The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographic area rather than the jurisdiction. The alternative desired should be indicated by selecting one of the two provided for in Rule 1.17 (a).

This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5 (e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice. The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice. Negotiations between a seller and a prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. See Rule 1.6 (c) (5). Providing the purchaser access to [client-specific] detailed information relating to the representation, [and to] such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser and must be told that the decision to consent or make other arrangements must be made within ninety days. If nothing is heard from the client within that time, consent to the sale is presumed.

A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. This procedure is contemplated as an in camera review of privileged materials.

All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements between Client and Purchaser. The sale may not be financed by increases in fees charged exclusively to the clients of the purchased practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards. Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be

agreed to (see Rule 1.7 regarding conflicts and Rule 1.0 [f] for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule. This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

Rule 4.4. Respect for Rights of Third Persons

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

(P.B. 1978-1997, Rule 4.4.)

COMMENTARY: Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer 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-lawyer relationship.

Subsection (b) recognizes that lawyers sometimes receive a document[s] or electronically stored information that [were] was mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or

electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information [original document], is a matter of law beyond the scope of these Rules, as is the question of whether the privilege status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows or reasonably should know may have been [wrongfully] inappropriately obtained by the sending person. For purposes of this Rule, “document or electronically stored information” includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as “metadata”), that is [e-mail or other electronic modes of transmission] subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving it that it was inadvertently sent. Where a lawyer 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 lawyer. See Rules 1.2 and 1.4.