NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on a proposal to amend Rules 1.0, 1.7, 1.8, 1.11, 1.12, 2.4, 4.1, 5.4, 5.5, 6.5, 8.1 and 8.3 of the Rules of Professional Conduct relating to conflicts of interest and other issues

Date: June 16, 2025

===================

The Administrative Board of the Courts is seeking public comment on a proposal from the New York State Bar Association (NYSBA) to amend the Rules of Professional Conduct by:

- deleting the definition of "differing interests" in Rule 1.0(f) to make it consistent with a proposed amendment to Rule 1.7;

- eliminating the term "differing interests" in Rule 1.7(a)(1), and instead adopting a more specific standard prohibiting representations "directly adverse" to a current client or representations that would be "materially limited" by the lawyer's responsibilities to another client or the lawyer's personal interests;

- amending Rule 1.8 by: (i) modifying paragraph (a), which bars a lawyer from entering into a business transaction with a client, to delete the condition "if they have differing interests therein"; (ii) deleting Rule 1.8(b); and (iii) conforming the language in Rule 1.8(l) to the proposed amendment to Rule 1.7;

- amending Rule 1.11(d)(3) and Rule 1.12(c) to add the words "seek or";

- modifying Rule 2.4(b) to require lawyer-neutrals to more clearly explain their role to unrepresented parties;

- clarifying that Rule 4.1 is limited to "material" falsehoods;

- adding a new subparagraph (a)(4) to Rule 5.4 to address division of fees between New York lawyers and out-of-state counsel or out-of-state referring lawyers who work in law firms with nonlawyer owners or supervisors;

- combining paragraphs (a) and (b) of Rule 5.5;

- amending Rule 6.5 in several ways, including by: (i) eliminating two references to Rule 1.8; (ii) eliminating a reference to "conflicts of interest as that term is defined in these Rules"; (iii) changing the term "actual knowledge" to "knows"; (iv) modifying Rule 6.5(b) and Rule 6.5(e), to clarify that Rule 1.10 is inapplicable to a limited pro bono representation, except as provided in Rule 6.5(a)(2), and to delete erroneous references to Rules 1.7 and 1.9; and (v) adding a new paragraph (f) to Rule 6.5, to clarify that a lawyer who represents a client under this rule or obtains confidential information from the representation, shall not thereafter represent another client if the lawyer knows the subsequent representation will violate Rule 1.9.

- adding a new paragraph (b) to Rule 8.1 to clarify that the rule does not require disclosure of information protected by Rules 1.6, 1.9, or 1.18, or information gained through participation in a bona fide lawyer assistance program; and

- clarifying that Rule 8.3 does not require disclosure of information otherwise protected by Rules 1.6, 1.9, or 1.18.

The proposed amendments are attached as Exhibit 1.

Attached as Exhibit 2 is a letter from NYSBA dated May 19, 2025, providing background and setting forth the reasons for the proposed amendments. (That letter recommends additional changes to Rule 1.11 and Rule 1.12 which are not being included in the proposed amendments covered by this Request for Public Comment.)

====================

Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than Friday, August 8, 2025.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance

of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT 1

Proposed Amendments

Rule 1.0 of the Rules of Professional Conduct is amended to delete paragraph (f) as follows (deletions in ~~strikethrough~~, and additions underscored):

Rule 1.0. Terminology

* * * * *

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

Paragraph (a) of Rule 1.7 of the Rules of Professional Conduct is amended to read as follows (deletions in ~~strikethrough~~, and additions underscored):

Rule 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if ~~either~~:

(1) the representation of one client will be directly adverse to another client ~~will involve the lawyer in representing differing interests~~; or

(2) there is a significant risk that (i) the lawyer's independent professional judgment on behalf of a client will be adversely affected by, or (ii) the representation of one or more clients otherwise will be materially limited by, the lawyer's responsibilities to another client, a former client or a third person or by the lawyer's own financial, business, property or other personal interests.

Paragraphs (a), (b), (c), and (l) of Rule 1.8 of the Rules of Professional Conduct are amended to read as follows (deletions in ~~strikethrough~~, and additions underscored):

Rule 1.8. Current Clients: Specific Conflict of Interest Rules

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

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

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

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

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

* * * * *

(l) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent in any matter a client whose interests ~~differ from~~ conflict under Rule 1.7(a) with those of another party to the matter who the lawyer knows is represented by the other lawyer unless the client gives informed consent~~s~~ to the representation and the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to the client.

Paragraph (d) of Rule 1.11 of the Rules of Professional Conduct is amended to read as follows (additions underscored):

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

* * * * *

(d) Except as law may otherwise expressly provide, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9 but is not subject to Rule 1.10;

(2) shall not participate in a matter, unless under applicable law no one is (or by lawful delegation may be) authorized to act in the lawyer's stead in the matter, if the lawyer either (i) has a conflict under Rule 1.7 or 1.9, or (ii) participated personally and substantially in the matter while in private practice

or nongovernmental employment; and

(3) shall not seek or negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a public officer or employee.

Paragraph (c) of Rule 1.12 of the Rules of Professional Conduct is amended to read as follows (additions underscored):

Rule 1.12. Specific Conflicts of Interest for Former Judges, Arbitrators, Mediators or Other Third-Party Neutrals

* * * * *

(c) A lawyer shall not seek or negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral.

Paragraph (b) of Rule 2.4 of the Rules of Professional Conduct is amended to read as follows (deletions in ~~strikethrough~~):

Rule 2.4. Lawyer Serving as Third-Party Neutral

* * * * *

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

Rule 4.1 of the Rules of Professional Conduct is amended to read as follows (additions underscored):

Rule 4.1. Truthfulness in Statements to Others

In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

Paragraph (a) of Rule 5.4 is amended by adding a new subparagraph (4) to read as follows (additions underscored):

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

* * * * *

(4) A lawyer or law firm may divide a fee with another lawyer or law firm that has nonlawyer owners or nonlawyer supervisors provided that:

(i) nonlawyer ownership of law firms is permitted in the jurisdiction whose professional conduct rules governs the other lawyer's conduct;

(ii) the lawyer who divides the fee does not permit any nonlawyer to interfere with the lawyer's independent professional judgment or with the client lawyer relationship; and

(iii) the division of fees with the other lawyer complies with Rule 1.5(g).

Rule 5.5 of the Rules of Professional Conduct is amended to read as follows (deletions in ~~strikethrough~~, and additions underscored):

Rule 5.5. Unauthorized Practice of Law

~~(a)~~ A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

~~(b) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.~~

Paragraphs (a), (b), and (e) of Rule 6.5 of the Rules of Professional Conduct are amended, and a new paragraph (f) is added to Rule 6.5, to read as follows (deletions in ~~strikethrough~~, and additions underscored):

Rule 6.5. Participation in Limited Pro Bono Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a court, government agency, bar association or not-for-profit legal services organization,

provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

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

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

(b) Except as provided in paragraph (a)(2), ~~Rule 1.7 and Rule 1.9 are~~ Rule 1.10 is inapplicable to a representation governed by this Rule.

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

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

(e) This Rule shall ~~not~~ cease to apply where the ~~court~~ tribunal before which the matter is pending determines that a conflict of interest exists or, if during the course of the representation, the lawyer providing the services becomes aware of the existence of a conflict of interest precluding continued representation, but Rule 1.10 shall remain inapplicable to the representation conducted under this Rule.

(f) A lawyer who has represented a client under this Rule, or who has obtained confidential information of the client as a result of such representation, shall not thereafter represent another client if the lawyer knows that the subsequent representation would violate Rule 1.9.

Rule 8.1 of the Rules of Professional Conduct is amended by adding a new paragraph (b) to read as follows (additions underscored):

Rule 8.1. Candor in the Bar Admission Process

* * * * *

(b) This Rule does not require disclosure of information protected by Rules 1.6, 1.9, or 1.18, or information gained through participation in a bona fide lawyer assistance program.

Subparagraph (1) of paragraph (c) of Rule 8.3 of the Rules of Professional Conduct is amended to read as follows (additions underscored):

Rule 8.3. Reporting Professional Misconduct

* * * * *

(c) This Rule does not require disclosure of:

(1) information otherwise protected by Rules 1.6, 1.9, or 1.18; or

(2) information gained by a lawyer or judge while participating in a bona fide lawyer assistance program.

EXHIBIT 2

NEW YORK STATE BAR ASSOCIATION

NYSBA One Elk Street, Albany, New York 12207 • 518.463.3200 • www.nysba.org

Domenick Napoletano, Esq.
President
Law Offices Of Domenick Napoletano
351 Court St
Brooklyn, NY 11231-4689
Phone: (718) 522-1377
Email: domenick@napoletanolaw.com

May 19, 2025

David Nocenti, Esq.
Counsel
New York State Office of Court Administration
25 Beaver Street
New York, NY 10004

RE: Proposed Amendments to New York Rules of Professional Conduct

Dear Mr. Nocenti:

As you know, the New York State Bar Association ("NYSBA"), through its Committee on Standards of Attorney Conduct ("COSAC"), has conducted a comprehensive review of the New York Rules of Professional Conduct (the "Rules"), and the House of Delegates has voted to approve the proposals contained in this memorandum. NYSBA recommends that the Courts consider the following proposals at this time.

Summary of Proposals

NYSBA recommends the changes to the Rules described below.

- ***Rule 1.0.*** Delete the definition of "differing interests" in Rule 1.0(f), because this term will no longer appear in the Rules of Professional Conduct if Rules 1.7 and related Rules and Comments are amended as NYSBA proposes.

- ***Rule 1.7.*** Eliminate the term "differing interests" in Rule 1.7 (New York's basic current-client conflict Rule) and adopt instead the formulation of the ABA Model Rules prohibiting representations "directly adverse" to a current client and representations where the representation of a client would be "materially limited" by the lawyer's responsibilities to another client or the lawyer's personal interests.

- ***Rule 1.8.*** Make largely technical changes to the wording of Rules 1.8(a), (b), (c) and (*l*), which deal with certain specific conflict of interest rules.

- ***Rule 1.11.*** Clarify Rule 1.11(d)(2) by adding the words "seek or" before the phrase "negotiate for private employment," and adding a new clause that would permit a law clerk to a judge or other adjudicative officer to seek and negotiate for employment under the conditions set forth in Rule 1.12(c). (NYSBA previously submitted a version of this proposal and the changes to Rule 1.12 discussed below that raised some concerns. NYSBA proposes to add the phrase "seek or/and" before "negotiate" to address those concerns.)

- ***Rule 1.12.*** In line with the changes to Rule 1.11 summarized above, clarify Rule 1.12(c) by adding the words "seek or" before the phrase "negotiate for employment," and adding a new second sentence permitting a law clerk to a judge or neutral to "seek and negotiate for employment" with lawyers or parties appearing before the judge or other neutral, but only subject to applicable rules of the judge or tribunal and only after notifying the judge or other neutral.

- ***Rule 2.4.*** Amend Rule 2.4(b) to require increased disclosures by lawyer-neutrals.

- ***Rule 4.1.*** Amend Rule 4.1 to make clear that Rule 4.1 is limited to "material" falsehoods.

- ***Rule 5.4.*** Add a new Rule 5.4(a)(4) to address a division of fees between New York lawyers and out-of-state co-counsel or out-of-state referring lawyers who work in law firms with nonlawyer owners or supervisors.

- ***Rule 5.5.*** Amend Rule 5.5(a) by incorporating the essence of Rule 5.5(b) into Rule 5.5(a) for the sake of uniformity in rule numbering with the numerous jurisdictions that have adopted ABA Model Rule 5.5.

- ***Rule 6.5.*** Revise Rule 6.5, which addresses participation in short-term pro bono representations (such as legal services clinics), in several ways to clarify the operation of the Rule.

- ***Rule 8.1.*** Add a new Rule 8.1(b) to clarify that the disclosure requirements of Rule 8.1(a) are subject to certain confidentiality requirements in the Rules.

- ***Rule 8.3.*** Amend Rule 8.3(c)(1) to provide an exception to mandatory reporting not only where information regarding a lawyer's violation of law or rules is confidential under Rule 1.6, but also where the information is confidential under Rules 1.9 or 1.18.

Below are details regarding these recommended changes.

Rule 1.0
Terminology

NYSBA proposes below to amend Rule 1.7 to replace the current "differing interests" standard with a more specific standard. If the Courts accept NYSBA's recommendation to delete "differing

interests," then the phrase "differing interests" will also be removed or replaced with appropriate language in the Comments to Rules 1.7, 1.8, 1.10, and 5.7. Once that is done, the phrase "differing interests" will no longer appear anywhere in the Rules or Comments. NYSBA therefore proposes to delete the definition of "differing interests" that appears in Rule 1.0(f) and to mark it "[Reserved]" to avoid the need to alter the letters for the remaining definitions.

Rule 1.7
Conflict of Interest: Current Clients

NYSBA recommends that New York abandon its vague "differing interests" standard in Rule 1.7 and adopt instead the more specific and more helpful standards found in ABA Model Rule 1.7(a)(1) and (a)(2).

Proposal # 1: Replace "differing interests" with a more specific standard

New York's current-client conflict of interest rule, Rule 1.7, is an outlier among the states. It incorporates the "differing interests" standard of the former ABA Model Code of Professional Responsibility. No other state uses that standard, and NYSBA believes the revised standard we now propose offers more guidance to lawyers and courts.

Under current Rule 1.7(a)(1), a lawyer has a conflict if a reasonable lawyer would conclude that the representation "will involve the lawyer in representing differing interests." The term "differing interests" is then defined, in Rule 1.0(f), as "every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse or other interest." This formulation has, in our view, a number of weaknesses. It starts with a highly vague term–"differing interests"–that would seem to be triggered even by very limited differences in client interests, including purely economic differences (for example, the development of a product by one client that will compete with another client's product). The definition does not provide sufficient guidance because it ultimately rests on an inquiry into whether the differing interests will adversely affect "either the judgment or the loyalty of a lawyer to a client." While the concept of an effect on the "judgment" of a lawyer can be readily understood, the concept of an effect on the "loyalty" of a lawyer ultimately reflects a value or policy judgment as to what the extent of a lawyer's loyalty to a client should be. In the end, the Rule provides no guidance on that question.

A further objection to the current Rule is that, by its terms, it is triggered only when a reasonable lawyer would conclude that the representation "will" involve representation of "differing interests" and, under the definition of that term, "differing interests" exist only when the lawyer's judgment or loyalty "will" be affected. In other words, the Rule by its terms finds a conflict only when a reasonable lawyer would be certain that differing interests will arise. There is no room to accommodate the numerous situations in which a divergence of interests is likely or reasonably possible. In practice, lawyers often consider themselves to have a conflict when a divergence in interest is likely but not certain, so the Rule does not describe the understanding of prudent lawyers.

In drafting the ABA Model Rules that the ABA House of Delegates ultimately adopted in 1983, the ABA abandoned the "differing interests" formulation early on–it does not appear in any of the

discussion drafts from 1980 to 1983 posted on the ABA website.[1] While there was extensive discussion of the precise formulation the ABA should adopt as a conflict standard, apparently no one proposed returning to the old "differing interests" standard.

In its current form, ABA Model Rule 1.7 retains the concepts behind the two core elements in the definition of "differing interests," but articulates those concepts differently and with greater precision. ABA Model Rule 1.7 replaces the concept of an adverse effect on the "judgment" of the lawyer with the concept of a "material limitation" on the lawyer's "representation" of the client; and it replaces the concept of an adverse effect on the lawyer's "loyalty" by defining precisely what is meant by the term "loyalty": the lawyer cannot be "directly adverse" to the client. This latter shift accurately captures what lawyers generally believe to be a conflict of interest, and it is far clearer than the "differing interests" standard. The twin prohibitions on representations that are "directly adverse" or "materially limited" have been adopted, in the same or substantially similar forms, by all other states except Georgia and North Dakota.[2]

The proposal made in this Report departs from the ABA Model Rules in three primary ways.

First, NYSBA recommends retaining New York's traditional reference to a lawyer's "independent professional judgment," a term contained in former DR 5-105 but not found in the text of ABA Model Rule 1.7. The concept of independent professional judgment is understandable and meaningful to New York lawyers, and New York courts and ethics authorities have developed over time a body of decisional law that has reinforced and illuminated it. At the same time, in some circumstances, it may be easier for a lawyer to understand the consequences of a conflict in terms of its impact on the *representation* itself, rather than its impact on the lawyer's own *judgment.* For example, a lawyer may have a conflict if the lawyer is advancing a legal position for Client A that is contrary to the position the lawyer is taking (or has previously taken) for Client B, where, because of the timing or prominence of the argument, the fact that the lawyer is making the argument on behalf of Client A may be used against Client B. That situation could "materially limit" the lawyer's *representation* of Client B even if the lawyer's *judgment* was not affected. Therefore, in line with the discussion in current Comment [8] to New York Rule 1.7, NYSBA proposes using both terms ("independent professional judgment" and "representation") in the revised Rule 1.7.

Second, NYSBA recommends departing from the ABA Model Rule by incorporating the existing New York phrase "a reasonable lawyer would conclude" in the introductory language to Rule 1.7(a), before defining the two general types of conflicts. This makes explicit what we believe is implicit in the ABA Model Rule and is consistent with the current New York Rule.

---

[1] *https://www.americanbar.org/groups/professional_responsibility/resources/report_archive/kutakcommissiondrafts.html.*

[2] The Georgia and North Dakota Rules find a conflict only if the representation or relationship with another client or a third party will have an adverse effect on the representation of a client, essentially eliminating the "directly adverse" aspect of the test. Other jurisdictions have adopted minor variations on the "directly adverse/materially limited" model. For example, the District of Columbia uses the term "adverse positions" in place of the concept "directly adverse," and Texas replaces the term "materially limited" with the phrase "adversely limited."

Third, where the ABA Model Rule refers simply to the "personal interest of the lawyer," NYSBA recommends retaining the existing New York term "the lawyer's own financial, business, property or other personal interests." This is a useful expansion of the concept of personal interest conflicts. It identifies the most common personal interests that give rise to conflicts and is a phrase with which New York courts and lawyers are familiar.

The changes set forth below reflect the above recommendations. In addition, in the next section of this report we recommend deleting the reference to "differing interests" in Rule 1.8(a) and the reference to "interests differ" in new Rule 1.8(*l*).

Rule 1.8
Current Clients: Specific Conflict of Interest Rules

NYSBA offers three groups of proposals to amend the text of Rule 1.8.

Proposal # 1: Amend Rule 1.8(a)

Rule 1.8(a) currently bars a lawyer from entering into a business transaction with a client, unless certain criteria are met (*e.g.*, the client signs a writing giving informed consent, and the transaction meets a test of fairness and reasonableness), if the lawyer and client "have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client." NYSBA recommends deleting the requirement that the lawyer and client "have differing interests therein" because it is redundant. If a lawyer and client are entering into a business transaction with each other, they will always have differing interests in the transaction.

Proposal # 2: Delete Rule 1.8(b)

NYSBA recommends deleting Rule 1.8(b) and marking it "[Reserved]" (thus avoiding the need to renumber the remaining provisions in Rule 1.8).

Rule 1.8(b) currently provides, "A lawyer shall not ***use*** information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules." (Emphasis added.)

Rule 1.8(b) is largely duplicative of Rule 1.6(a), which provides, in part:

> A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or ***use*** such information ***to the disadvantage of a client*** or for the advantage of the lawyer or a third person, unless: (1) the client gives informed consent, as defined in Rule 1.0(j); (2) the disclosure is impliedly authorized . . .; (3) the disclosure is permitted by paragraph (b). [Emphasis added.]

The ABA Model Rules include Rule 1.8(b), but the Model Rules do not contain the same redundancy as New York Rule 1.8(b) because the Model Rules distinguish between "revealing" confidential information and "using" confidential information. The ABA Model Rules deal with "revealing" confidential information in Model Rule 1.6, and deal with "using" such information to the disadvantage of the client in Model Rule 1.8(b). New York's Rules instead combine those two

points ("revealing" and "using" confidential information to the disadvantage of the client) in a single rule, New York Rule 1.6(a).

In addition to being largely duplicative of New York's Rule 1.6, New York Rule 1.8(b) contains the ABA Model Rules' broader and vaguer definition of protected information—"information relating to representation of a client"—even though New York chose to retain in New York Rule 1.6(a) a narrower and more specific definition of "confidential information" similar to the definition of "confidences" and "secrets" that had appeared in DR 4-101(A) of the former New York Code of Professional Responsibility.

Thus, Rule 1.8(b) overlaps with Rule 1.6(a). Indeed, Rule 1.8(b) implicitly refers to Rule 1.6 in the final clause of Rule 1.8(b), which says "except as permitted or required by these Rules." NYSBA submits that Rule 1.8(b) is not necessary to protect clients and creates confusion for lawyers.

Proposal # 3: Update the wording of Rule 1.8(*l*)

In NYSBA's previous set of proposed Rule revisions, which was dated December 2, 2024, NYSBA proposed to move Rule 1.10(h) (which is a special conflict rule dealing with family relationships among lawyers appearing for opposing clients in a matter and not an imputation rule) to Rule 1.8, as a new paragraph (*l*) at the end of existing Rule 1.8. As noted above in connection with the changes to Rule 1.7 deleting the phrase "differing interests," NYSBA also proposes in Rule 1.8(*l*) to change the phrase "a client whose *interests differ* from" to the phrase "a client whose *interests conflict under Rule 1.7(a)* with."

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

For the reasons set forth below in connection with Rule 1.12, NYSBA proposes to add a provision to Rule 1.12(c) to specifically address employment applications by law clerks to parties or counsel involved in a matter in which the law clerk is participating. This proposed change is in line with the ABA Model Rules. NYSBA also proposes to include in Rule 1.11(d) a reference to that new provision, as in the ABA Model Rules. Further, and as also set forth below in connection with Rule 1.12, NYSBA proposes to clarify the phrase "negotiate for employment" in both Rules 1.11(d) and 1.12 (c) by inserting the phrase "seek or" or "seek and" (as appropriate) before the word "negotiate." As with the changes to Rule 1.12(c) discussed below, NYSBA proposed a similar change in the set of proposals dated December 2, 2024, and has now revised the proposal in response to concerns expressed about the prior proposal.

Rule 1.12
Specific Conflicts of Interest for Former Judges, Arbitrators, Mediators or Other Third-Party Neutrals

NYSBA recommends two changes to Rule 1.12(c).

Proposal # 1: Amend Rule 1.12(c) to address law clerk employment applications

NYSBA recommends including a provision addressing law clerk employment negotiations or applications with a party, law firm, or lawyer currently involved in a matter before the law clerk's employer (such as a judge or arbitrator). Currently, New York Rule 1.12(c) is silent on law clerks–it provides that a lawyer "shall not negotiate for employment with parties or their lawyers in a matter in which the lawyer is participating personally and substantially *as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral*." (Emphasis added.) This same language appears in ABA Model Rule 1.12(b), but the ABA Rule goes on to address law clerk employment applications in a separate sentence.

As commentators have noted, the ABA Model Rule provision for law clerks is more relaxed than the ABA Model Rule provision for judges. Unlike judges, law clerks under the ABA Model Rule are permitted to "negotiate over future employment even when they are personally involved in a matter, but they are required to disclose these negotiations to the current employer ... [in order to] allow the judge to factor in the possibility of bias in the clerk's work and to respond accordingly." GEOFFREY HAZARD, WILLIAM HODES & PETER JARVIS, THE LAW OF LAWYERING § 17.06 (4th ed. 2017). NYSBA proposes to address law clerks by adopting an additional sentence based on ABA Model Rule 1.12(c), but with two modifications.

First, NYSBA proposes to make the permission subject to any rules that tribunals or agencies may have adopted to deal with law clerk employment negotiations and applications. NYSBA suggests adding the reference, because court rules and rules of other tribunals and agencies frequently address this issue.

Second, NYSBA proposes to add the words "seek and" before the phrase "negotiate for employment" to make clear that any effort by a law clerk to obtain future employment with a party, law firm, or lawyer currently involved in a matter before the law clerk's employer (such as a judge or arbitrator) in which the clerk is participating personally and substantially requires the law clerk to first notify the judge or other neutral. The word "seek" thus clears up ambiguity as to whether preliminary steps such as sending a resume or inquiring about possible employment constitute efforts by the law clerk to "negotiate" for employment. Whether those steps fall under the rubric of negotiating for employment, they do constitute seeking employment.

Proposal # 2: Amend Rule 1.12(c) to add "seek or" to language governing judges

Existing Rule 1.12(c), which governs judges and other neutrals, also uses the phrase "negotiate for employment." NYSBA proposes to add the words "seek or" before the phrase "negotiate for employment," for the same reasons that NYSBA recommends adding that phrase to the new sentence in Rule 1.12(c) governing law clerks seeking or negotiating for employment.

Rule 2.4
Lawyer Serving as Third-Party Neutral

NYSBA recommends amending Rule 2.4(b) to require increased disclosures by lawyer-neutrals.

Rule 2.4 first became part of the New York Rules of Professional Conduct in 2009—the Code of Professional Responsibility had no equivalent. NYSBA recommends amendments to the existing text of Rule 2.4(b).

Currently Rule 2.4 requires a lawyer-neutral to inform all unrepresented parties that the lawyer-neutral does not represent them, but does *not* require the lawyer-neutral to explain "the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client" unless "the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter." In contrast, Virginia Rule 2.4 requires a lawyer-neutral to disclose the difference between a neutral and a client representative to *all* parties (represented or unrepresented), and Illinois Rule 2.4 requires a lawyer-neutral to disclose the difference to all *unrepresented* parties.

NYSBA recommends the Illinois approach, which is midway between the Virginia approach (mandating disclosure to *all* parties) and the current New York approach (mandating disclosure to *no* parties). Thus, NYSBA's proposal would require lawyers to explain the difference between a neutral and a client representative to all unrepresented parties. NYSBA recommends this approach for three reasons.

First, it is likely that in many cases unrepresented parties will lack a full understanding of the lawyer's role. *See* N.Y. State 900 (2011) ("In nearly all instances where parents are unrepresented by counsel and inexperienced in mediation and other legal matters, Inquirer 'reasonably should know' that the parents do not understand Inquirer's role ...").

Second, a bright-line rule would be a clear and reasonable safeguard, avoiding the need for a lawyer-neutral to assess whether any party "does not understand the lawyer's role in the matter."

Third, the additional disclosure would not have to be lengthy, individualized or burdensome, and would not differ substantially from the simple disclosure that is already routinely required (the lawyer-neutral does not represent any parties).

Rule 4.1
Truthfulness in Statements to Others

NYSBA proposes to amend Rule 4.1 to make clear that Rule 4.1 is limited to "material" falsehoods. New York Rule 4.1 currently has one sentence, which reads, "In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person." This is similar to ABA Model Rule 4.1(a), except that the ABA Rule includes a materiality requirement, referring to a "false statement of *material* fact or law."

It appears that only three other states—Minnesota, North Dakota and Virginia—have adopted a version of Rule 4.1 that omits the word "material."

NYSBA submits that adding a materiality requirement to Rule 4.1 would conform the text of the rule to the reality that an immaterial false statement would not be considered sanctionable conduct. For example, as explained in Comment [2] to New York Rule 4.1, it is widely accepted that "[e]stimates of price or value placed on the subject of a transaction and a party's intentions as to an

acceptable settlement of a claim" are not typically treated as statements of fact that a counterparty would rely on. If a lawyer says, "My client will not accept a penny less than $1,000," when in fact the client has authorized a settlement or sale at $750, that would not ordinarily lead to discipline (nor should it). The reason for not imposing discipline is that the statement, even if literally a statement of fact, is not viewed as a statement of *material* fact, and very few people would rely on such a statement.

Rule 5.4
Professional Independence of a Lawyer

NYSBA recommends adding a new Rule 5.4(a)(4) to address a division of fees (sometimes called "interfirm fee sharing") between New York lawyers, on one hand, and out-of-state co-counsel or out-of-state referring lawyers who work in law firms that have nonlawyer owners or nonlawyer supervisors, on the other hand. Rule 5.4(a) bars sharing legal fees with a nonlawyer, with certain exceptions (*e.g.*, payments to a lawyer's estate and payments to a lawyer's nonlawyer employees pursuant to a profit-sharing plan). The proposed new provision would make clear that sharing fees with out-of-state co-counsel or referring counsel in firms with nonlawyer owners or managers does not constitute improper fee sharing with nonlawyers.

The instances in which such interfirm fee sharing will arise are relatively limited. Under existing Rule 1.5(g), a lawyer is barred from dividing a fee for legal services with another lawyer who is not associated in the same law firm unless "(1) the division is in proportion to the services performed by each lawyer or, by a writing given to the client, each lawyer assumes joint responsibility for the representation; (2) the client agrees to employment of the other lawyer after a full disclosure that a division of fees will be made, including the share each lawyer will receive, and the client's agreement is confirmed in writing; and (3) the total fee is not excessive." The Rule permits interfirm fee sharing with (i) co-counsel and (ii) with lawyers who refer cases to other lawyers and assume joint responsibility for the representation. (In addition, under Rule 1.5(h), fees can be shared with lawyers formerly associated in a law firm pursuant to a separation or retirement agreement.)

Thus, the principal circumstances in which lawyers may wish to share fees with an out-of-state law firm that has nonlawyer owners are where a lawyer in one jurisdiction retains local counsel in another jurisdiction or refers the work on a matter to another lawyer in the relevant jurisdiction more qualified to handle the matter while retaining joint responsibility for the matter. The issue arises where the referring or co-counsel law firm is in a jurisdiction, such as the District of Columbia, England or Australia, that permits nonlawyers to have an ownership in the law firm. The proposed amendment is based on the policy conclusion that the fact that a nonlawyer owner of the other firm might receive a portion of the profits of that firm that stem indirectly from the fees shared by the in-state lawyer is too attenuated to qualify as sharing a fee with the non-lawyer owner–just as the receipt by a law firm's employees or contractors of income that can be traced to legal fees does not amount to prohibited sharing of fees with a nonlawyer.

NYSBA's proposed rule would permit division of fees with a lawyer or law firm that has nonlawyer owners or nonlawyer supervisors if three conditions are satisfied: (i) nonlawyer ownership of law firms is permitted in the jurisdiction whose professional conduct rules govern the other lawyer's conduct, (ii) the New York lawyer who divides the fee does not permit any nonlawyer to interfere

with the lawyer's independent professional judgment or with the client lawyer relationship; and (iii) the division of fees complies with New York Rule 1.5(g) (quoted above).

The language of proposed subparagraph (a)(4)(ii) of Rule 5.4 is based on language found in existing Rule 1.8(f)(2), which provides that a lawyer shall not accept "anything of value" related to the lawyer's representation of the client from one other than the client unless, among other things, "(2) there is no interference with the lawyer's independent professional judgment or with the client-lawyer relationship ...."

(Further background on the proposal is contained in a lengthy Report of the NYSBA Task Force on Nonlawyer Ownership, dated November 17, 2012, available at New York State Bar Association Task Force on Non-Lawyer Ownership Report, especially pp. 67-68 & 76-78.)

Rule 5.5
Unauthorized Practice of Law

New York Rule 5.5 currently has two paragraphs: "(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. (b) A lawyer shall not aid a nonlawyer in the unauthorized practice of law." NYSBA recommends incorporating the terms of Rule 5.5(b) into Rule 5.5(a) so that amended Rule 5.5 will match ABA Model Rule 5.5(a).

The purpose of combining former subparagraphs (a) and (b) of Rule 5.5 into a single paragraph is simply to conform to the approach in ABA Model Rule 5.5, thus making New York's rule numbering consistent with the numbering of ABA Model Rule 5.5 and the many jurisdictions that have adopted it. This is not a substantive change.

Rule 6.5
Participation in
Limited Pro Bono Legal Services Programs

NYSBA proposes a series of clarifying and technical amendments to Rule 6.5, which regulates lawyer's participation in pro bono programs that provide short-term limited legal services:

Proposal to eliminate references to Rule 1.8 in Rule 6.5(a)(1)

Rule 6.5 provides that Rules 1.7, 1.8 and 1.9 do not apply to a short-term limited representation unless the lawyer knows of a conflict at the *outset* of the representation. Rule 1.8, however, contains a set of rules that deal with conflicts arising out of conduct by a lawyer *during* the course of a representation, such as business transactions with the client, advancing financial assistance to a client in litigation, and soliciting gifts from a client. These restrictions (and all other restrictions in Rule 1.8) should apply to a short-term limited scope representation, regardless of whether the lawyer knew at the outset that there was a conflict. Thus, NYSBA proposes deleting the reference to Rule 1.8 in Rule 6.5(a)(1).

Proposal to delete "conflicts as ... defined in these Rules" in Rule 6.5(a)(1)

NYSBA proposes to eliminate from Rule 6.5(a)(1) the explanatory reference "concerning restrictions on representations where there are or may be conflicts of interests *as that term is defined in these Rules.*" (Emphasis added.) That reference is incorrect. The term "conflicts of interest" is not defined anywhere in the New York Rules. Moreover, the words are inconsistent with the style of the Rules, which nowhere else contain a short-hand description of the Rules governing conflicts.

Proposal to change "actual knowledge" to "knows" in Rule 6.5(a)(1) and (a)(2)

Rule 6.5(a)(l)-(2) refers to a lawyer having "actual knowledge" of certain conflicts. Because Rule l.0(k) defines "know" or "knows" to mean "*actual knowledge* of the fact in question," NYSBA proposes to replace the phrase "if the lawyer *has actual knowledge*" with the phrase "if the lawyer *knows.*"

Proposal to change "affected by" to "disqualified by" in Rule 6.5(a)(2)

Rule 6.5(a)(2) refers to knowledge that "another lawyer associated with the lawyer in a law firm is *affected by* Rules 1.7, 1.8 and 1.9." ABA Model Rule 6.5 uses the term "disqualified by," which is a more precise and more accurate term. The term "affected by" in Rule 6.5(a)(2) made sense when Rule 6.5 referred to Rule 1.8, because the provisions of Rule 1.8 "affect" a lawyer's conduct without disqualifying the lawyer–but if the reference to Rule 1.8 is deleted from Rule 6.5 (as NYSBA recommends), then the word "disqualified" is more accurate than the word "affected."

Proposal to change "Rules 1.7 *and* 1.9" to "Rule 1.7 *or* 1.9" in Rule 6.5(a)(2)

If the references to Rule 1.8 are deleted, then Rule 6.5(a)(2) will end with the phrase "disqualified by Rules 1.7 and 1.9." NYSBA proposes changing the phrase "Rules 1.7 *and* 1.9" to the phrase "Rule 1.7 *or* 1.9," because the disqualification would likely be under either Rule 1.7 or Rule 1.9, but not both.

Proposal to change "Rules 1.7 and 1.9" to "Rule 1.10." in Rule 6.5(b)

Rule 6.5(b) currently states: "Except as provided in paragraph (a)(2), Rules 1.7 and 1.9 are inapplicable to a representation governed by this Rule." The reference to paragraph (a)(2) is in error, because Rule 6.5(a)(2) does not provide that Rules 1.7 and 1.9 would apply to the representation. Rather, Rule 6.5(a)(2) deals with whether *Rule 1.10* applies to the representation. NYSBA therefore proposes inserting Rule 1.10 in place of the reference to Rules 1.7 and 1.9.

As amended, Rule 6.5(b) would make clear that any conflicts arising out of a short-term limited representation ordinarily would not be imputed to other lawyers in the firm. That is consistent with the likely reading of Rule 6.5(a) even absent Rule 6.5(b), because Rule 6.5(a) expressly eliminates conflicts under Rule 1.7 and 1.9 that would otherwise disqualify the short-term-limited-representation lawyer. Nevertheless, Rule 6.5(b) serves a useful purpose by emphasizing the lack of imputation. (Also, amended Rule 6.5(b) would complement the amendments NYSBA proposes to Rule 6.5(e) below.)

Proposal to address situations not clearly dealt with in Rule 6.5(e)

Rule 6.5(e) addresses what happens if, during the course of a short-term limited scope representation, a lawyer providing short-term services becomes aware of a conflict of interest under Rule 1.7 or 1.9 that precludes further representation. In that circumstance, Rule 6.5(e) currently says: "This Rule shall not apply." That leaves an ambiguity as to whether Rule 1.10 would apply with full force in that circumstance.

If Rule 1.10 would apply with full force (as the current language seems to suggest), that would require the short-term lawyer's firm to enter the short-term limited scope representation into the firm's conflict checking system, as required by Rule 1.10(e), even though the lawyer may not have gathered the information necessary to do that. It would also mean that, to comply with Rules 1.9 and 1.10(a), the firm would need to obtain the informed consent of its now-former short-term client before continuing to represent the firm's ongoing client. It is unlikely that this harsh result was intended. Rather, the likely intent was simply that Rule 6.5 would *no longer* apply (*i.e.,* would "cease to apply") and would thus no longer allow the short-term limited representation to *continue* without an appropriate waiver (*i.e.,* informed consent) from the former client pursuant to Rule 1.9. The changes NYSBA proposes to Rule 6.5(e) make this result clear.

In addition, NYSBA proposes to replace the narrow term "court" in Rule 6.5(e) with the broader term "tribunal," a term defined in Rule 1.0(w) to include not only courts but also arbitrators, administrative agencies, and other bodies "acting in an adjudicative capacity." Using the word "tribunal" reflects that the short-term representation might be before, for example, an administrative tribunal (such as an unemployment compensation hearing officer) that might not be considered to be a "court."

In addition, N.Y. State Ethics Op. 1012 (2014) raised two situations that are not clearly dealt with in Rule 6.5(e): (i) the situation where the *short-term lawyer* later undertakes a new representation that is both adverse to the former client and substantially related to the former representation, and (ii) the situation where *another lawyer* in the firm undertakes such a new representation. Opinion 1012 concluded that the short-term lawyer *personally* should be precluded from participating in such a new adverse and substantially related representation, but that *other* lawyers in the firm should not be precluded. (In other words, the short-term lawyer's conflict would not be imputed to the entire firm.) Nothing in the language of Rule 6.5 makes that result clear, however, if no conflict existed *during* the limited short-term representation.

Indeed, because Rule 6.5(a)(l) states that Rule 1.9 does not apply to the representation in that circumstance, nothing appears to prevent the short-term lawyer from taking on a new engagement adverse to the former short-term client. NYSBA's proposed new subparagraph (f) to Rule 6.5 remedies this problem, so that the short-term lawyer is personally barred from representing another client adverse to the former short-term client in a substantially related matter, but other lawyers in the firm (except any who have learned confidential information of the former client) are not barred.

The changes that NYSBA proposes would align New York's Rule 6.5 more closely with ABA Model Rule 6.5, thus giving New York lawyers access to a wider range of ethics opinions and other sources interpreting Rule 6.5.

Rule 8.1

Candor in the Bar Admission Process

NYSBA recommends adding an entirely new Rule 8.1(b).

Rule 8.1(a)(2) subjects a lawyer to discipline if, in connection with a bar application by the lawyer or another person, the lawyer knowingly "has failed to disclose a material fact requested in connection with a lawful demand for information from an admissions authority." However, unlike Rule 8.3, which requires lawyers to report professional misconduct by another lawyer and respond to lawful demands from authorities authorized to investigate such misconduct, Rule 8.1 contains no exception for confidential client information or information gained by a lawyer through participation in a bona fide lawyer assistance program.

The policies supporting the protection of client confidences and of information gathered in a lawyer assistance program would seem to apply equally to a lawyer's obligation to report professional misconduct as to bar admissions. Client information should not be put at risk because of a lawyer's misconduct or the fact that the information is relevant to a bar application. Further, bar applicants should not be discouraged from retaining counsel or contacting a lawyer assistance program for help with substance abuse, stress, or other problems. Therefore, NYSBA proposes to add a new paragraph (b) to Rule 8.1 to make clear that the Rule does not require disclosure of information protected by Rules 1.6, 1.9 or 1.18 or information gained through participation in a bona fide lawyer assistance program.

ABA Model Rule 8.1 has an explicit exception for information protected by Rule 1.6. For the reasons set forth in the proposal for a parallel change to Rule 8.3 discussed below, NYSBA proposes expanding this exception to include information protected by Rules 1.9 and 1.18.

Rule 8.3
Reporting Professional Misconduct

Rule 8.3(a) requires that lawyers in certain circumstances report professional misconduct, and Rule 8.3(c) contains an exception for information protected by Rule 1.6 or gained while participating in a bona fide lawyer assistance program. But the exception does not extend expressly to information that is confidential under Rule 1.9 (which protects confidential information of former clients) or Rule 1.18 (which protects information learned from prospective clients). The policy considerations supporting the exception would seem to apply equally no matter which of these Rules provides the basis of confidentiality. NYSBA therefore proposes to add a reference to Rules 1.9 and 1.18 to Rule 8.3(c)(1).

Respectfully,

President, New York State Bar Association

Appendix A (attached)

Appendix A

Redlined proposals to amend Rules

NYSBA proposes to revise the indicated New York Rules to read as follows:

Rule 1.0(f)

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

Rule 1.7(a)

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if ~~either~~:

(1) the representation of one client will be directly adverse to another client ~~will involve the lawyer in representing differing interests~~; or

(2) there is a significant risk that (i) the lawyer's independent professional judgment on behalf of a client will be adversely affected by, or (ii) the representation of one or more clients otherwise will be materially limited by, the lawyer's responsibilities to another client, a former client or a third person or by the lawyer's own financial, business, property or other personal interests.

Rule 1.8(a), (b), (c) and (f)

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

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

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

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

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

....

(l) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent in any matter a client whose interests ~~differ from~~ conflict under Rule 1.7(a) with those of another party to the matter who the lawyer knows is represented by the other lawyer unless the client gives informed consents to the representation and the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to the client.

Rule 1.11(d)

(d) Except as law may otherwise expressly provide, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9 but is not subject to Rule 1.10;

(2) shall not participate in a matter, unless under applicable law no one is (or by lawful delegation may be) authorized to act in the lawyer's stead in the matter, if the lawyer either (i) has a conflict under Rule 1.7 or 1.9, or (ii) participated personally and substantially in the matter while in private practice or nongovernmental employment; and

(3) shall not seek or negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a public officer or employee, except that a lawyer serving as a law clerk to a judge or other adjudicative officer may seek and negotiate for employment as permitted by Rule 1.12(c) and subject to the conditions stated therein.

Rule 1.12(c)

(c) A lawyer shall not seek or negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may, subject to any applicable tribunal or agency rules, seek and negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

Rule 2.4(b)

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them and~~. When the lawyer knows or reasonably should know~~

~~that a party does not understand the lawyer's role in the matter, the lawyer~~ shall explain to them the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Rule 4.1

In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

New Rule 5.4(a)(4)

(4) A lawyer or law firm may divide a fee with another lawyer or law firm that has nonlawyer owners or nonlawyer supervisors provided that:

(i) nonlawyer ownership of law firms is permitted in the jurisdiction whose professional conduct rules governs the other lawyer's conduct;

(ii) the lawyer who divides the fee does not permit any nonlawyer to interfere with the lawyer's independent professional judgment or with the client lawyer relationship; and

(iii) the division of fees with the other lawyer complies with Rule 1.5(g).

Rule 5.5

~~(a)~~ A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

~~(b) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.~~

Rule 6.5

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

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

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

(b) Except as provided in paragraph (a)(2), ~~Rule 1.7 and Rule 1.9 are~~ Rule 1.10 is inapplicable to a representation governed by this Rule.

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

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

(e) This Rule shall ~~not~~ cease to apply where the ~~court~~ tribunal before which the matter is pending determines that a conflict of interest exists or, if during the course of the representation, the lawyer providing the services becomes aware of the existence of a conflict of interest precluding continued representation, but Rule 1.10 shall remain inapplicable to the representation conducted under this Rule.

(f) A lawyer who has represented a client under this Rule, or who has obtained confidential information of the client as a result of such representation, shall not thereafter represent another client if the lawyer knows that the subsequent representation would violate Rule 1.9.

New Rule 8.1(b)

(b) This Rule does not require disclosure of information protected by Rules 1.6, 1.9, or 1.18, or information gained through participation in a bona fide lawyer assistance program.

Rule 8.3

(c) This Rule does not require disclosure of:

(1) information otherwise protected by Rules 1.6, 1.9, or 1.18; or ...