Notice to the Bar

Proposed New Court Rules and Rule Amendments Relating to Pro Bono Practice of Law – Comments Invited

The Supreme Court invites written comment on a number of proposed new court rules and rule amendments related to the pro bono practice of law. The proposed new and amended rules are published with this notice.

The New Jersey State Bar Association ("NJSBA") in 2011 formed a Pro Bono Task Force ("Task Force") to examine "the justice gap that leaves so many residents and organizations of this state without the legal help they need and deserve," and to identify ways to engage more lawyers in meaningful pro bono service. The NJSBA Task Force was comprised of representatives from New Jersey's private bar, pro bono organizations, Legal Services organizations, the law schools, and the Judiciary. The Task Force issued its report in May 2012. The Task Force report may be found on the NJSBA website at: http://www.njsba.com/images/content/1/0/1005980.pdf. After approval at the 2012 NJSBA Annual Meeting, the NJSBA submitted the report to the Supreme Court for its consideration.

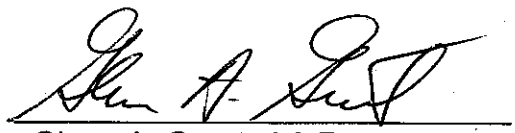
Recommendation Two of the NJSBA Task Force Report requested that the Supreme Court adopt proposed new court rules and rule amendments, found in Appendix B to the Task Force Report, designed to clarify, streamline, and encourage pro bono practice. By this notice, the Court is publishing for comment a slightly modified version of those rules and rule amendments.

Please send any comments on the proposed new court rules and rule amendments relating to pro bono practice in writing by **Monday, April 14, 2014** to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Pro Bono Rules Comments
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Comments also may be submitted via Internet e-mail to the following address: Comments.Mailbox@judiciary.state.nj.us.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address). Comments are subject to public disclosure after the Court has acted.



Glenn A. Grant, J.A.D.
Acting Administrative Director

Dated: March 6, 2014

Proposed Rules and Rule Amendments

1:21-XX. Definitions and Certifications Regarding Pro Bono Practice [new]

(a) Definitions.

(1) Qualifying Pro Bono Service. Qualifying pro bono service consists of:

(i) legal assistance to low-income persons;

(ii) legal assistance to nonprofit charitable, religious, civic, community, or educational organizations or governmental entities in matters that are designed primarily to address the needs of low-income persons;

(iii) legal assistance to individuals, groups, or organizations seeking to secure, protect, or advance civil rights, civil liberties, or other rights of great public importance; or

(iv) legal assistance to nonprofit charitable, religious, civic, community, or educational organizations or governmental entities in matters in furtherance of their purposes, where payment of standard legal fees would significantly deplete the organization's or entity's economic resources or would otherwise be inappropriate.

Qualifying pro bono service does not include partisan political activity or service on a nonprofit board of directors or other service that is unrelated to the provision of legal representation or legal advice. It does include legal mentoring and training to prepare attorneys, or students in a law school clinical or pro bono program as defined in subsection (a)(3), to provide qualifying pro bono service.

Qualifying pro bono service is undertaken outside the course of ordinary commercial practice and is performed without a fee from the client. If a fee-shifting statute applies in a qualifying pro bono case, attorneys or firms in commercial practice may seek fees and are strongly encouraged to donate them to a legal services or public interest organization or law school clinical or pro bono program as defined in subsections (a)(2) and (3). If an attorney or firm in commercial practice retains fees in a qualifying pro bono case, no attorney may claim an exemption from court-appointed pro bono service based on the hours expended on that case. See R. 1:21-YY(b). Cases accepted on a contingency-fee basis do not constitute qualifying pro bono service regardless of whether the attorney receives a fee.

(2) Legal Services or Public Interest Organization. Legal Services of New Jersey and the associated regional programs are legal services organizations. Other legal services or public interest organizations include any nonprofit organization incorporated in this or any state with a central purpose of providing qualifying pro bono service as defined in subsection (a)(1).

(3) Law School Clinical or Pro Bono Program. A law school clinical or pro bono program is one that operates under the auspices of a law school accredited in this state and has a central purpose of providing qualifying pro bono service as defined in subsection (a)(1).

(b) Certifications.

(1) Certification of Legal Services or Public Interest Organizations and Law School Clinical or Pro Bono Programs.

Legal Services of New Jersey and the associated regional programs shall be deemed certified under this Rule without the need to file certifications.

Except as provided in subsection (b)(3), any other legal services or public interest organization or law school clinical or pro bono program that provides legal assistance at least in part through the cooperation of pro bono volunteers and seeks to take advantage of the opportunities offered in Rules 1:21-YY(a) (Madden-exemption based on pro bono service in conjunction with certified organization or program); 1:21-3(b), (c) (special practice rule for law students, recent graduates, and out-of-state attorneys); 1:21-10 (special practice rule following determination of major disaster); or 1:27-2(g) (special practice rule for limited license attorneys) shall:

(i) file with the Clerk of the Supreme Court an initial certification on a Judiciary-approved form, signed by the organization's or program's lead attorney who practices law in New Jersey, demonstrating that the organization or program meets the definition in subsection (a)(2) or (3) of this rule, provided, however, that any organization or program that has already received Supreme Court approval as of the date of this Rule, as reflected in a list to be made available by the Administrative Director of the Courts, shall not be required to provide such a certification; and

(ii) file with the Clerk of the Supreme Court, by April 30 of every year, a certification on a Judiciary-approved form signed by the organization's or program's lead attorney who practices law in New Jersey certifying

(a) that the organization or program continues to meet the definition in subsection (a)(2) or (3) of this rule; and

(b) a list of attorneys who have provided qualifying pro bono service under the auspices of the organization or program in the preceding year; ~~and~~

(iii) notify the Clerk of the Supreme Court at such time as the organization or program no longer meets the definition in subsection (a)(2) or (3) of this rule.

An organization or program that fails to timely file its yearly certification under R. 1-21-xx(b)(1)(ii) will lose its status as a certified entity under subsection (b)(1).

(2) Approval and Certification for Waiver of Fees. Legal Services of New Jersey and the associated regional programs shall be deemed eligible, without the need to seek

approval or file certifications, for a waiver of fees without the necessity of a court order as provided in R. 1:13-2(a).

Any other public interest or legal services organization or law school clinical or pro bono program may seek approval for such a waiver by filing a certification on a Judiciary- approved form with the Clerk of the Supreme Court, which may be included with an initial certification filed under subsection (b)(1)(i), demonstrating that the organization or program screens its clients to establish their low incomes, provided, however, that organizations and programs that have already received Supreme Court approval for a fee waiver as of the date of this Rule, and submit documentation of such prior approval to the Clerk of the Supreme Court , shall not be required to provide such a certification.

If approval is granted, the entity shall:

(i) file with the Clerk of the Supreme Court by April 30 of every year a certification on a Judiciary-approved form, which may be included with the certifications filed annually under subsection (b)(1)(ii), demonstrating that the organization or program continues to screen its clients to establish their low incomes; and

(ii) notify the Clerk of the Supreme Court at such time as the organization or program, or any part thereof, no longer screens clients to establish their low incomes.

An organization or program which fails to timely file its yearly certification under R. 1-21-xx(b)(2)(i) shall lose the ability to waive fees under R. 1:13-2.

1:21-YY. Madden-Exemption Based on Voluntary Qualifying Pro Bono Service [new]

(a) Exemption Based on Qualifying Pro Bono Service in Conjunction with a Certified Entity. Attorneys who certify that they have performed at least twenty-five (25) hours of voluntary (as distinct from court-appointed) qualifying pro bono service in New Jersey in the year ending on December 31 before the certification date shall be exempt from court-appointed pro bono service under Madden v. Delran, 126 N.J. 591 (1992), for the following year, provided that the certification states that the voluntary qualifying pro bono service was performed in conjunction with an entity certified under R. 1:21-XX(b)(1) or (3) and identifies the entity with which the attorney collaborated.

(b) No Madden-Exemption If Attorney Retains Fees. If an attorney or firm in commercial practice retains fees (as distinct from costs) in a qualifying pro bono case, whether awarded by a court or negotiated in settlement of a matter in which a fee-shifting statute applies, no attorney may claim an exemption from court-appointed pro bono service based on the hours expended on that case.

Conforming Amendments

Rule 1:13-2 would be amended as follows:

1:13-2. Proceedings by Indigents

(a) Waiver of Fees. Except when otherwise specifically provided by these rules, whenever any person by reason of poverty seeks relief from the payment of any fees provided for by law which are payable to any court or clerk of court including the office of the surrogate or any public officer of this State, any court upon the verified application of such person, which application may be filed without fee, may in its discretion order the payment of such fees waived. In any case in which a person is represented by a legal ~~aid society, a Legal Services project~~ services or public interest organization or law school clinical or pro bono program approved under R. 1:21-XX(b)(2), private counsel representing indigents in cooperation with any of the preceding entities, the Office of the Public Defender, or counsel assigned in accordance with these rules, all such fees and any charges of public officers of this State for service of process shall be waived without the necessity of a court order.

(b) Compensation of Attorneys. Except as provided by any order of the court, no attorney assigned to represent a person by reason of poverty shall take or agree to take or seek to obtain from the client, payment of any fee, profit or reward for the conduct of such proceedings for office or other expenses; but no attorney shall be required to expend any personal funds in the prosecution of the cause.

Rule 1:21-3 would be amended as follows:

1:21-3. Appearance by Law Graduates and Students; Special Permission for Out-of- State Attorneys

(a) Appearance Prior to Passing Bar Examination. A graduate of a law school approved by the American Bar Association ~~who has successfully completed an approved skills and methods course~~ may, before passing the bar examination, appear in any court for the purpose of answering the calendar call in an action in which the attorney or firm employing the graduate is the attorney of record.

(b) Appearance by Law Students and Graduates. A third year law student at, or graduate of, a law school approved by the American Bar Association may appear before a trial court or agency in ~~accordance~~ conjunction with a legal services or public interest organization or law school clinical or pro bono program certified under R. 1:21-XX(b)(1) or (3), ~~program approved by the Supreme Court on submission by such law school, a legal aid society, legal services project~~ or an agency of municipal, county or state government. ~~A program once approved, need not be resubmitted to the Supreme Court provided that reports are filed listing the participants and the nature of their assignments, as required by the Administrative Office of the Courts. Participation in a program~~ Permission to appear pursuant to this paragraph by a law graduate who has not passed the New Jersey bar examination shall terminate upon the graduate's failure

to pass the bar examination for the third time, or after two years of employment following graduation, whichever is sooner.

(c) Permission for Out-of-State Attorneys to Practice in This State. A graduate of an approved law school who is a member of the bar of another state or of the District of Columbia and is employed by, associated with, or serving as a volunteer pro bono attorney with ~~an organization described in R. 1:21-1(e) and approved by the Supreme Court~~ a legal services or public interest organization or law school clinical or pro bono program certified under R. 1:21-XX(b)(1) or (3), shall be permitted to practice, under the supervision of a member of the bar of the State, before all courts of this State in all causes ~~in which the attorney is associated or serving pro bono with~~ on behalf of such entities, ~~legal services program,~~ subject to the following conditions:

(1) Permission for an out-of-state attorney to practice under this rule shall become effective on filing with the Clerk of the Supreme Court evidence of graduation from an approved law school, a certificate of any court of last resort certifying that the out-of-state attorney is a member in good standing of the bar of another state or of the District of Columbia, and~~, (a) in the case of attorneys employed by or associated with, an approved R. 1:21-1(e) organization,~~ a statement ~~signed by the President, Legal Services of New Jersey,~~ that the out-of-state attorney is currently employed by, ~~or~~ associated with, ~~such organization; or (b) in the case of a pro bono attorney with an approved R. 1:21-1(e) organization, on the filing of a statement by the executive director of that organization certifying that the attorney is~~ or serving on a voluntary pro bono basis with ~~the~~ a legal services or public interest organization or law school clinical or pro bono program certified under R. 1:21-XX(b)(1) or (3), which statement shall be signed by the entity's lead attorney who practices law in New Jersey;

(2) Permission to practice under this rule shall ~~cease whenever~~ apply only in matters in which the out-of-state attorney ~~ceases to be~~ is employed by, associated with, or serving as a volunteer pro bono attorney with a legal services or public interest organization or law school clinical or pro bono program certified under R. 1:21-XX(b)(1) or (3); ~~an approved R. 1:21-1(e) organization in this State;~~

~~(3) Notice of said cessation shall be filed with the Clerk of the Supreme Court by the President, Legal Services of New Jersey, within five days after being notified of the cessation of the out-of-state attorney's employment or association; or by the executive director of the organization, in the case of a volunteer pro bono attorney~~;

~~(4) Permission to practice in this State under this rule shall remain in effect no longer than 2 1/2 years, except that there is no time limit on volunteer pro bono service with an approved R. 1:21-1(e) organization~~;

(3) ~~(5)~~ Permission to practice ~~in this State~~ under this rule may be revoked or suspended by the Supreme Court, in its discretion, at any time either by written notice to the out-of-state attorney or by amendment or deletion of this rule; and

(4) ~~(6)~~ Out-of-state attorneys permitted to practice under this rule are not, and shall not represent themselves to be, members of the bar of this State.

Rule 1:21-10 would be amended as follows:

1:21-10. Provision of Legal Services Following Determination of Major Disaster

(a) Determination of Existence of Major Disaster. Solely for purposes of this Rule, the Supreme Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster has occurred:

(1) in New Jersey and whether the emergency caused by the major disaster affects all or only a part of the State, or

(2) in another jurisdiction, but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in New Jersey pursuant to paragraph (c) of this Rule shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(b) Temporary Practice in New Jersey Following Major Disaster. Following the determination of an emergency affecting the justice system in New Jersey pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in New Jersey are in need of pro bono services and the assistance of lawyers from outside of New Jersey is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through ~~an established not-for-profit bar association, pro bono program or legal services program~~ a legal services or public interest organization or law school clinical or pro bono program certified under R. 1:21-XX(b)(1) or (3), or through such organization(s) specifically designated by the Court.

(c) Temporary Practice in New Jersey Following Major Disaster in Another Jurisdiction. Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in New Jersey on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) Duration of Authority for Temporary Practice.

(1) The authority to practice law in New Jersey granted by paragraph (b) of this Rule shall end when the Supreme Court determines that the conditions caused by the major disaster in New Jersey have ended, except that a lawyer then representing clients in New Jersey pursuant to paragraph (b) of this Rule is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients.

(2) The authority to practice law in New Jersey granted by paragraph (c) of this Rule shall end 60 days after the Supreme Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

(e) Court Appearances. The authority granted by this Rule does not include appearances in court except:

(1) pursuant to R. 1:21-2 (appearances pro hac vice) and, if such admission is granted, the fees for such admission shall be waived; or

(2) if the Supreme Court, in any determination made under paragraph (a) of this Rule, grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b) of this Rule. If such permission is granted, any pro hac vice admission fees shall be waived.

(f) Disciplinary Authority, Registration, Lawful Practice of Law. Lawyers providing legal services in New Jersey pursuant to this Rule:

(1) are subject to the Supreme Court's disciplinary authority and the Rules of Professional Conduct;

(2) shall, within 30 days from the commencement of the provision of legal services in New Jersey, file a registration statement with the Clerk of the Supreme Court. The registration statement shall be in a form prescribed by the Supreme Court;

(3) shall not be considered to be engaged in the unlawful practice of law in New Jersey; and

(4) shall not be required to comply with R. 1:20-1(b) or (c), R. 1:28-2 or R. 1:28B-1 (payment of annual assessments and filing of annual registration statement with New Jersey Lawyers' Fund for Client Protection).

(g) Notification to Clients. Lawyers who provide legal services pursuant to this Rule shall inform clients in New Jersey of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in New Jersey except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in New Jersey.

Rule 1:27-2 would be amended as follows:

1:27-2. Limited License; In-House Counsel

To be eligible to practice law in New Jersey as an in-house counsel, a lawyer must comply with the provisions of this Rule. A limited license issued by the Supreme Court pursuant to this Rule shall authorize the lawyer to practice solely for the designated employer in New Jersey. Except as specifically limited herein, the rules, rights and privileges governing the practice of law in this State shall be applicable to a lawyer admitted under this Rule.

(a) In-House Counsel Defined. In-House Counsel is a lawyer who is employed in New Jersey for a corporation, a partnership, association, or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) authorized to transact business in this State that is not itself engaged in the practice of law or the rendering of legal services outside such organization, whether for a fee or otherwise, and does not charge or collect a fee for the representation or advice other than to entities comprising such organization.

(b) Requirements. All applications under this Rule are to be submitted to the Secretary to the Board of Bar Examiners. An in-house counsel who is admitted to practice law before the highest court of any other state, territory of the United States, Puerto Rico, or the District of Columbia (hereinafter a United States jurisdiction) may receive a limited license to practice law in this State under the following conditions:

(i) The applicant certifies that he or she is a member in good standing of the bar of the highest court of each United States jurisdiction in which the applicant is licensed to practice law and provides a certificate of good standing from each United States jurisdiction in which the applicant is admitted;

(ii) The applicant certifies that: (a) no disciplinary proceedings are pending against the applicant and that no discipline has previously been imposed on the applicant in any jurisdiction; or (b) if discipline has been previously imposed, the certification shall state the date, jurisdiction, nature of the violation, and the sanction imposed. If proceedings are pending, the certification shall specify the jurisdiction, the charges, and the likely time of their disposition. A lawyer admitted under this Rule shall have the continuing obligation during the period of such admission promptly to inform the Director of the Office of Attorney Ethics pursuant to Rule 1:20-14(a) of a disposition made of disciplinary proceedings. Any questions concerning the character or fitness of a lawyer may be referred to the Supreme Court Committee on Character for review and recommendation (Rule 1:25). The submission of an application for an In-House Limited License shall be a consent to such investigation as the Committee on Character deems appropriate;

(iii) Except as provided in (g), t~~T~~he applicant certifies that he or she performs legal services in this State solely for the identified employer, or that he or she performs legal services in this State solely for the identified employer and its constituents (employees, directors, officers, members, partners, shareholders) in respect or the same proceeding of claim as the employer, provided that the performance of such services is consistent with RPC 1.13 and RPC 1.7; and

(iv) The employer certifies through an officer, director or general counsel that the applicant is employed as a lawyer for said employer, that the applicant is of good moral character, and that the nature of the employment conforms to the requirements of this Rule.

(c) Compliance. A lawyer admitted pursuant to this Rule shall comply with the annual assessments pursuant to R. 1:20-1(b) (Disciplinary Oversight Committee), R. 1:28-2 (New Jersey Lawyers' Fund for Client Protection), and R.1:28B-1(e) (Lawyers Assistance Program).

(d) Limitation. In-house counsel shall not appear as Attorney of Record for his or her employer, its parent, subsidiary, affiliated entities or any of their constituents in any case or matter pending before the courts of this State, except pursuant to R. 1:21-1(c) and R. 1:21-2.

(e) Duration. The limited license to practice law in this State shall expire if such lawyer is admitted to the Bar of this State under any other rule of this Court, or if such lawyer ceases to be an employee for the employer or its parent, subsidiary, or affiliated entities, listed on such lawyer's application, whichever shall first occur; provided, however, that if such lawyer, within ninety days of ceasing to be an employee for the employer or its parent, subsidiary, or affiliated entities listed on such lawyer's application, becomes employed by another employer for which such lawyer shall perform legal services as in-house counsel, such lawyer may maintain his or her admission under this Rule by promptly filing with the Secretary to the Board of Bar Examiners a certification to such effect, stating the date on which his or her prior employment ceased and his/her new employment commenced, identifying his or her new employer and reaffirming that he or she shall not provide legal services, in this State, to any individual or entity other than as described in (b)(iii) or (g). The lawyer shall also file a certification of the new employer as described in (b)(iv). In the event that the employment of a lawyer admitted under this Rule shall cease with no subsequent employment by a successor employer within ninety days, such lawyer shall promptly file with the Secretary to the Board of Bar Examiners a statement to such effect, stating the date that such employment ceased.

(f) Fee. Each applicant for a limited license shall pay the required fees as established by the Board of Bar Examiners and approved by the Supreme Court.

(g) Pro Bono. A lawyer with a limited license to practice pursuant to this rule is exempt from court-appointed pro bono service under Madden v. Delran, 126 N.J. 591 (1992). Such lawyer may nevertheless serve as a volunteer pro bono attorney with an entity certified under R. 1:21-XX(b)(1) or (3), provided that such pro bono service shall cease upon expiration of the limited license to practice in this State as described in (e).

(h) Not Admitted. Lawyers with a limited license to practice pursuant to this rule are not, and should not represent themselves to be, members of the bar of this State.

RPC 1.8 would be amended as follows:

RPC 1.8 Conflict of Interest: Current Clients: Specific Rules

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

(1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be 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 of the client's choice concerning 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) Except as permitted or required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client after full disclosure and consultation, gives informed consent.

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

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

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

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) ~~A non-profit~~ a legal services or public interest organization, a law school clinical or pro bono program, or an attorney providing qualifying pro bono service as defined in R. 1:21-XX(a), ~~authorized under R. 1:21-1(e)~~ may provide financial assistance to indigent clients whom ~~it~~ the organization, program, or attorney is representing without fee.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

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

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

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or no contest pleas, unless each client gives informed consent after a consultation that shall include disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client fails to act in accordance with the lawyer's advice and the lawyer nevertheless continues to represent the client at the client's request. Notwithstanding the existence of those two conditions, the lawyer shall not make such an agreement unless permitted by law and the client is independently represented in making the agreement; or

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

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may: (1) acquire a lien granted by law to secure the lawyer's fee or expenses, (2) contract with a client for a reasonable contingent fee in a civil case.

(j) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

(k) A lawyer employed by a public entity, either as a lawyer or in some other role, shall not undertake the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client.

(l) A public entity cannot consent to a representation otherwise prohibited by this Rule.