

RULES OF PROFESSIONAL CONDUCT

(Includes all amendments through those effective January 1, 2015)

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- (CODE OF PROFESSIONAL RESPONSIBILITY TO RULES OF PROFESSIONAL CONDUCT)
- Prepared by the Office of Attorney Ethics

These rules shall be referred to as the Rules of Professional Conduct and shall be abbreviated as "RPC"

RPC 1.0. Terminology

- (a)** "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.
- (b)** "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent."
- (c)** "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.
- (d)** "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.
- (e)** "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.
- (f)** "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
- (g)** "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.
- (h)** "Primary responsibility" denotes actual participation in the management and direction of the matter at the policy-making level or responsibility at the operational level as manifested by the continuous day-to-day responsibility for litigation or transaction decisions
- (i)** "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
- (j)** "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
- (k)** "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.
- (l)** "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely adoption and enforcement by a law firm of a written procedure pursuant to RPC 1.10(f) which is reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.
- (m)** "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.
- (n)** "Tribunal" denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.
- (o)** "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Note: Adopted November 17, 2003 to be effective January 1, 2004.

RPC 1.1. Competence

A lawyer shall not:

- (a)** Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.
- (b)** Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) A lawyer shall abide by a client's decisions concerning the scope and objectives of representation, subject to paragraphs (c) and (d), and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client's decision on the plea to be entered, jury trial, and whether the client will testify.

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

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law, but a lawyer may counsel or assist a client in a good faith effort to determine the validity, scope, meaning or application of the law.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption amended, paragraphs (a) and (c) amended, and paragraph (e) deleted and redesignated as RPC 1.4(d) November 17, 2003 to be effective January 1, 2004.

RPC 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 1.4. Communication

(a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.

(b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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

(d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct.

Note: Adopted July 12, 1984 to be effective September 10, 1984; new paragraphs (a) and (d) adopted and former paragraphs (a) and (b) redesignated as paragraphs (b) and (c) November 17, 2003 to be effective January 1, 2004.

RPC 1.5. Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

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

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

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

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

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

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or by these rules. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery,

showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

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

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

(e) Except as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and

(2) the client is notified of the fee division; and

(3) the client consents to the participation of all the lawyers involved; and

(4) the total fee is reasonable.

Note: Adopted July 12, 1984 to be effective September 10, 1984; new subparagraph (e)(2) added and former subparagraphs (e)(2) and (e)(3) redesignated as subparagraphs (e)(3) and (e)(4) November 17, 2003 to be effective January 1, 2004.

RPC 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), and (d).

(b) A lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person:

(1) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or substantial injury to the financial interest or property of another;

(2) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to perpetrate a fraud upon a tribunal.

(c) If a lawyer reveals information pursuant to RPC 1.6(b), the lawyer also may reveal the information to the person threatened to the extent the lawyer reasonably believes is necessary to protect that person from death, substantial bodily harm, substantial financial injury, or substantial property loss.

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

(1) to rectify the consequences of a client's criminal, illegal or fraudulent act in the furtherance of which the lawyer's services had been used;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, or to establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer based upon the conduct in which the client was involved; or

(3) to prevent the client from causing death or substantial bodily harm to himself or herself; or

(4) to comply with other law.

(e) Reasonable belief for purposes of RPC 1.6 is the belief or conclusion of a reasonable lawyer that is based upon information that has some foundation in fact and constitutes prima facie evidence of the matters referred to in subsections (b), (c), or (d).

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended, new paragraph (c) added, former paragraph (c) redesignated as paragraph (d), and former paragraph (d) amended and redesignated as paragraph (e) November 17, 2003 to be effective January 1, 2004; former subparagraph (d)(3) redesignated as subparagraph (d)(4) and new subparagraph (d)(3) adopted July 19, 2012 to be effective September 4, 2012.

RPC 1.7. Conflict of Interest: General Rule

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

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

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

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;**
- (2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
- (3) the representation is not prohibited by law; and**
- (4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.**

Note: Adopted July 12, 1984 to be effective September 10, 1984; text deleted and new text adopted November 17, 2003 to be effective January 1, 2004.

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.n**
- (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 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. 1:21-11(a), may provide financial assistance to indigent clients whom 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 advise 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.

Note: Adopted September 10, 1984 to be effective immediately; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; caption amended, paragraphs (a), (b), (c), (f), (g), (h) amended, former paragraph (i) deleted, former paragraph (j) redesignated as paragraph (i), former paragraph (k) deleted, and new paragraphs (j), (k) and (l) added November 17, 2003 to be effective January 1, 2004; subparagraph (e)(3) amended July 22, 2014 to be effective January 1, 2015.

RPC 1.9. Duties to Former Clients

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

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

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

(2) about whom the lawyer, while at the former firm, had personally acquired information protected by RPC 1.6 and RPC 1.9(c) that is material to the matter unless the former client gives informed consent, confirmed in writing.

Notwithstanding the other provisions of this paragraph, neither consent shall be sought from the client nor screening pursuant to RPC 1.10 permitted in any matter in which the attorney had sole or primary responsibility for the matter in the previous firm.

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

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

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

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

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption amended, paragraphs (a) and (b) amended, and new paragraphs (c) and (d) added November 17, 2003 to be effective January 1, 2004.

RPC 1.10. Imputation of Conflicts of Interest: General Rule

(a) When lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by RPC 1.7 or RPC 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

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

(1) any lawyer remaining in the firm has information protected by RPC 1.6 and RPC 1.9(c) that is material to the matter.

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

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under RPC 1.9 unless:

(1) the matter does not involve a proceeding in which the personally disqualified lawyer had primary responsibility;

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

(3) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions

of this Rule.

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

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by RPC 1.11.

(f) Any law firm that enters a screening arrangement, as provided by this Rule, shall establish appropriate written procedures to insure that: (1) all attorneys and other personnel in the law firm screen the personally disqualified attorney from any participation in the matter, (2) the screened attorney acknowledges the obligation to remain screened and takes action to insure the same, and (3) the screened attorney is apportioned no part of the fee therefrom.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (b) corrected in Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 217-18 (1988); caption and paragraphs (a), (b), and (c) amended, paragraph (d) deleted, former paragraph (e) amended and redesignated as paragraph (d), new paragraphs (e) and (f) adopted November 17, 2003 to be effective January 1, 2004.

RPC 1.11. Successive Government and Private Employment

(a) Except as law may otherwise expressly permit, and subject to RPC 1.9, a lawyer who formerly has served as a government lawyer or public officer or employee of the government shall not represent a private client in connection with a matter:

(1) in which the lawyer participated personally and substantially as a public officer or employee, or

(2) for which the lawyer had substantial responsibility as a public officer or employee; or

(3) when the interests of the private party are materially adverse to the appropriate government agency, provided, however, that the application of this provision shall be limited to a period of six months immediately following the termination of the attorney's service as a government lawyer or public officer.

(b) Except as law may otherwise expressly permit, a lawyer who formerly has served as a government lawyer or public officer or employee of the government:

(1) shall be subject to RPC 1.9(c)(2) in respect of information relating to a private party or information that the lawyer knows is confidential government information about a person acquired by the lawyer while serving as a government lawyer or public officer or employee of the government, and

(2) shall not represent a private person whose interests are adverse to that private party in a matter in which the information could be used to the material disadvantage of that party.

(c) In the event a lawyer is disqualified under (a) or (b), the lawyer may not represent a private client, but absent contrary law a firm with which that lawyer is associated may undertake or continue representation if:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom, and

(2) written notice is given promptly to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(d) Except as law may otherwise expressly permit, a lawyer serving as a government lawyer or public officer or employee of the government:

(1) shall be subject to RPC 1.9(c)(2) in respect of information relating to a private party acquired by the lawyer while in private practice or nongovernmental employment,

(2) shall not participate in a matter (i) in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, or (ii) for which the lawyer had substantial responsibility while in private practice or nongovernmental employment, or (iii) with respect to which the interests of the appropriate government agency are materially adverse to the interests of a private party represented by the lawyer while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter or unless the private party gives its informed consent, confirmed in writing, and

(3) shall not negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially or for which the lawyer has substantial responsibility, except that a lawyer serving as a law clerk shall be subject to RPC 1.12(c).

(e) As used in this Rule, the term:

(1) "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and any other matter covered by the conflict of interest rules of the appropriate government agency;

(2) "confidential government information" means information that has been obtained under governmental authority and that, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and that is not otherwise available to the public.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended, text of paragraph (b) deleted and new text adopted, new paragraph (c) adopted,

former paragraphs (c) and (d) amended and redesignated as paragraphs (d) and (e), and former paragraph (e) merged into redesignated paragraph (e) November 17, 2003 to be effective January 1, 2004; paragraph (c) amended July 9, 2008 to be effective September 1, 2008.

Comment by Court (Regarding 2008 Amendment)

In *In re ACPE Opinion 705, 192 N.J. 46 (2007)*, the Court deferred to the Legislature in the spirit of comity and held that the post-government employment restrictions imposed by the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-17, apply in the context of former State attorneys. The 2008 amendment to paragraph (c) implements that decision.

RPC 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral or Law Clerk

(a) Except as stated in paragraph (c), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator, mediator or other third-party neutral, or law clerk to such a person, unless all parties to the proceeding have given consent, confirmed in writing.

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

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

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

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

(d) An arbitrator selected by a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption and paragraph (a) amended, new paragraph (b) adopted, former paragraphs (b) and (c) amended and redesignated as paragraphs (c) and (d) November 17, 2003 to be effective January 1, 2004.

RPC 1.13. Organization as the Client

(a) A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders or other constituents. For the purposes of RPC 4.2 and 4.3, however, the organization's lawyer shall be deemed to represent not only the organizational entity but also the members of its litigation control group. Members of the litigation control group shall be deemed to include current agents and employees responsible for, or significantly involved in, the determination of the organization's legal position in the matter whether or not in litigation, provided, however, that "significant involvement" requires involvement greater, and other than, the supplying of factual information or data respecting the matter. Former agents and employees who were members of the litigation control group shall presumptively be deemed to be represented in the matter by the organization's lawyer but may at any time disavow said representation.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) When the organization's highest authority insists upon action, or refuses to take action, that is clearly a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer may take further remedial action that the lawyer reasonably believes to be in the best interest of the organization. Such action may include revealing information otherwise protected by RPC 1.6 only if the lawyer reasonably believes that:

(1) the highest authority in the organization has acted to further the personal or financial interests of members of that authority which are in conflict with the interests of the organization; and

(2) revealing the information is necessary in the best interest of the organization.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer believes that such explanation is necessary to avoid misunderstanding on their part.

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

(f) For purposes of this rule "organization" includes any corporation, partnership, association, joint stock company, union, trust, pension fund, unincorporated association, proprietorship or other business entity, state or local government or political subdivision thereof, or non-profit organization

Note: Adopted September 10, 1984, to be effective immediately; amended June 28, 1996, to be effective September 1, 1996.

RPC 1.14. Client Under a Disability

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

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

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

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended and new paragraph (c) adopted November 17, 2003 to be effective January 1, 2004.

RPC 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a financial institution in New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record.:

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer shall comply with the provisions of R. 1:21-6 ("Recordkeeping") of the Court Rules

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 1.16. Declining or Terminating Representation

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

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

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

(3) the lawyer is discharged.

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

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;**
 - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;**
 - (3) the client has used the lawyer's services to perpetrate a crime or fraud;**
 - (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;**
 - (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;**
 - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or**
 - (7) other good cause for withdrawal exists.**
- (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.**
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law. No lawyer shall assert a common law retaining lien.**

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (b), (c), and (d) amended November 17, 2003 to be effective January 1, 2004; paragraph (d) amended March 25, 2013 to be effective April 1, 2013.

RPC 1.17. Sale of Law Practice

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

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

(b) The entire practice is sold to one or more lawyers or law firms.

(c) Written notice is given to each of the seller's clients stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of the client's file and property; and that if no response to the notice is received within sixty days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client.

(1) If the seller is the estate of a deceased lawyer, the purchaser shall cause the notice to be given to the client and the purchaser shall obtain the written consent of the client provided that such consent shall be presumed if no response to the notice is received within sixty days of the date the notice was sent to the client's last known address as shown on the records of the seller, or the client's rights would be prejudiced by a failure to act during such sixty-day period.

(2) In all other circumstances, not less than sixty days prior to the transfer the seller shall cause the notice to be given to the client and the seller shall obtain the written consent of the client prior to the transfer, provided that such consent shall be presumed if no response to the notice is received within sixty days of the date of the sending of such notice to the client's last known address as shown on the records of the seller.

(3) The purchaser shall cause an announcement or notice of the purchase and transfer of the practice to be published in the New Jersey Law Journal and the New Jersey Lawyer at least thirty days in advance of the effective date of the transfer.

(d) The fees charged to clients shall not be increased by reason of the sale of the practice.

(e) If substitution in a pending matter is required by the tribunal or these Rules, the purchasing lawyer or law firm shall provide for same promptly.

(f) Admission to or withdrawal from a partnership, professional corporation, or limited liability entity, retirement plans and similar arrangements, or sale limited to the tangible assets of a law practice shall not be deemed a sale or purchase for purposes of this Rule.

Note: Adopted October 16, 1992, to be effective immediately; paragraph (f) amended July 10, 1998, to be effective September 1, 1998; paragraph (b) amended November 17, 2003 to be effective January 1, 2004.

RPC 1.18. Prospective Client

(a) A lawyer who has had discussions in consultation with a prospective client shall not use or reveal information acquired in the consultation, even when no client-lawyer relationship ensues, except as RPC 1.9 would permit in respect of information of a former client.

(b) A lawyer subject to paragraph (a) shall not represent a client with interests materially adverse to those of a former prospective client in the same or a substantially related matter if the lawyer received information from the former prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (c).

(c) If a lawyer is disqualified from representation under (b), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except that representation is permissible if (1) both the affected client and the former prospective client have given informed consent, confirmed in writing, or (2) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom and written notice is promptly given to the former prospective client.

(d) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a "prospective client," and if no client-lawyer relationship is formed, is a "former prospective client."

Note: Adopted November 17, 2003 to be effective January 1, 2004.

RPC 2.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social and political facts, that may be relevant to the client's situation.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 2.2. (Reserved)

Note: RPC 2.2 ("Intermediary") adopted July 12, 1984 to be effective September 10, 1984; caption and rule deleted November 17, 2003 effective January 1, 2004.

RPC 2.3. Evaluation for Use by Third Persons

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless:

(1) the lawyer describes the conditions of the evaluation to the client, in writing, including disclosure of information otherwise protected by RPC 1.6;

(2) the lawyer consults with the client; and

(3) the client gives informed consent.

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

(d) In reporting an evaluation, the lawyer shall indicate any material limitations that were imposed on the scope of the inquiry or on the disclosure of information.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended and redesignated as paragraphs (a) and (b), former paragraph (b) redesignated as paragraph (d), and paragraph (c) amended November 17, 2003 to be effective January 1, 2004.

RPC 2.4. Lawyer Serving as Third-Party Neutral

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

(b) A lawyer serving as a third-party neutral shall inform the parties that the lawyer is not representing them. 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 the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Note: Adopted November 17, 2003 to be effective January 1, 2004.

RPC 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law, or the establishment of new law. A lawyer for the

defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Note: Adopted July 12, 1984 to be effective September 10, 1984; amended November 17, 2003 to be effective January 1, 2004.

RPC 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client and shall treat with courtesy and consideration all persons involved in the legal process.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;**
- (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client;**
- (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;**
- (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures; or**
- (5) fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.**

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

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or assist another person to do any such act;**
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;**
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;**
- (d) in pretrial procedure make frivolous discovery requests or fail to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party;**
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or**
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

 - (1) the person is a relative or an employee or other agent of a client; and**
 - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.;****
- (g) present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter**

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (g) adopted July 18, 1990, to be effective September 4, 1990.

RPC 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;**
- (b) communicate ex parte with such a person except as permitted by law;**
- (c) engage in conduct intended to disrupt a tribunal; or**
- (d) contact or have discussions with a judge or other adjudicative officer, arbitrator, mediator, or other third-party neutral (hereinafter "judge") about the judge's post-retirement employment while the lawyer (or a law firm with or for whom the lawyer is a partner, associate, counsel, or contractor) is involved in a pending matter in which the judge is participating personally and substantially.**

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (b) and (c) amended and new paragraph (d) adopted July 19, 2012 to be effective September 4, 2012.

RPC 3.6. Trial Publicity

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding.**
- (b) Notwithstanding paragraph (a), a lawyer may state:**
 - (1) the claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved;**
 - (2) the information contained in a public record;**
 - (3) that an investigation of the matter is in progress;**
 - (4) the scheduling or result of any step in litigation;**
 - (5) a request for assistance in obtaining evidence and information necessary thereto;**
 - (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and**
 - (7) in a criminal case, in addition to subparagraphs (1) through (6):**
 - (i) the identity, residence, occupation and family status of the accused;**
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;**
 - (iii) the fact, time and place of arrest; and**
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.**
- (c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.**

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (b)(1) amended October 1, 1992, to be effective immediately; paragraph (a) amended, paragraph (b) deleted and restated in Official Comment, paragraph (c) amended and redesignated as paragraph (b), and new paragraph (c) adopted November 17, 2003 to be effective January 1, 2004.

Official Comment by Supreme Court (November 17, 2003)

A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:

- (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness other than the victim of a crime, or the expected testimony of a party or witness;**
- (2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;**
- (3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;**
- (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in**

incarceration;

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

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

RPC 3.7. Lawyer as Witness

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

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by RPC 1.7 or RPC 1.9.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important post-indictment pretrial rights, such as the right to a preliminary hearing;
- (d) make timely disclosure to the defense of all evidence known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- (e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
 - (1) either the information sought is not protected from disclosure by any applicable privilege or the evidence sought is essential to an ongoing investigation or prosecution; and
 - (2) there is no other feasible alternative to obtain the information;
- (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under RPC 3.6 or this Rule.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraphs (c) and (d) amended and new paragraphs (e) and (f) adopted November 17, 2003 to be effective January 1, 2004.

RPC 3.9. Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of RPC 3.3(a) through (d), RPC 3.4(a)

through (g), and RPC 3.5(a) through (c).

Note: Adopted July 12, 1984 to be effective September 10, 1984; amended November 17, 2003 to be effective January 1, 2004.

RPC 4.1. Truthfulness in Statements to Others

(a) In representing a client a lawyer shall not knowingly:

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

(2) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

(b) The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows, or by the exercise of reasonable diligence should know, to be represented by another lawyer in the matter, including members of an organization's litigation control group as defined by RPC 1.13, unless the lawyer has the consent of the other lawyer, or is authorized by law or court order to do so, or unless the sole purpose of the communication is to ascertain whether the person is in fact represented. Reasonable diligence shall include, but not be limited to, a specific inquiry of the person as to whether that person is represented by counsel. Nothing in this rule shall, however, preclude a lawyer from counseling or representing a member or former member of an organization's litigation control group who seeks independent legal advice.

Note: Adopted September 10, 1984, to be effective immediately; amended June 28, 1996, to be effective September 1, 1996; amended November 17, 2003 to be effective January 1, 2004.

Official Comment by Supreme Court (November 17, 2003)

Concerning organizations, RPC 4.2 addresses the issue of who is represented under the rule by precluding a lawyer from communicating with members of the organization's litigation control group. The term "litigation control group" is not intended to limit application of the rule to matters in litigation. As the Report of the Special Committee on RPC 4.2 states, "... the 'matter' has been defined as a 'matter whether or not in litigation.'" The primary determinant of membership in the litigation control group is the person's role in determining the organization's legal position. See *Michaels v. Woodland*, 988 F.Supp. 468, 472 (D.N.J. 1997).

In the criminal context, the rule ordinarily applies only after adversarial proceedings have begun by arrest, complaint, or indictment on the charges that are the subject of the communication. See *State v. Bisaccia*, 319 N.J. Super. 1, 22-23 (App. Div. 1999).

Concerning communication with governmental officials, the New Jersey Supreme Court Commission on the Rules of Professional Conduct agrees with the American Bar Association's Commission comments, which state::

Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with a governmental official. For example, the constitutional right to petition and the public policy of ensuring a citizen's right of access to government decision makers, may permit a lawyer representing a private party in a controversy with the government to communicate about the matter with government officials who have authority to take or recommend action in the matter.

RPC 4.3. Dealing with Unrepresented Person; Employee of Organization

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. If the person is a director, officer, employee, member, shareholder or other constituent of an organization concerned with the subject of the lawyer's representation but not a person defined by RPC 1.13(a), the lawyer shall also ascertain by reasonable diligence whether the person is actually represented by the organization's attorney pursuant to RPC 1.13(e) or who has a right to such representation on request, and, if

the person is not so represented or entitled to representation, the lawyer shall make known to the person that insofar as the lawyer understands, the person is not being represented by the organization's attorney.

Note: Adopted September 10, 1984, to be effective immediately; amended June 28, 1996, to be effective September 1, 1996.

RPC 4.4. Respect for Rights of Third Persons

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

(b) A lawyer who receives a document and has reasonable cause to believe that the document was inadvertently sent shall not read the document or, if he or she has begun to do so, shall stop reading the document, promptly notify the sender, and return the document to the sender.

Note: Adopted July 12, 1984 to be effective September 10, 1984; text redesignated as paragraph (a) and new paragraph (b) adopted November 17, 2003 to be effective January 1, 2004.

RPC 5.1. Responsibilities of Partners, Supervisory Lawyers, and Law Firms

(a) Every law firm, government entity, and organization authorized by the Court Rules to practice law in this jurisdiction shall make reasonable efforts to ensure that member lawyers or lawyers otherwise participating in the organization's work undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct.

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

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or ratifies the conduct involved; or

(2) the lawyer having direct supervisory authority over the other lawyer knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(d) No law firm or lawyer on behalf of a law firm shall pay an assessment or make a contribution to a political organization or candidate, including but not limited to purchasing tickets for political party dinners or for other functions, from any of the firm's business accounts while a municipal court judge is associated with the firm as a partner, shareholder, director, of counsel, or associate or holds some other comparable status with the firm.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption and paragraph (a) amended November 17, 2003 to be effective January 1, 2004; new paragraph (d) adopted July 19, 2012 to be effective September 4, 2012.

RPC 5.2. Responsibilities of a Subordinate Lawyer

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

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

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 5.3. Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.

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

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

(1) the lawyer orders or ratifies the conduct involved;

(2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or

(3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

Note: Adopted July 12, 1984 to be effective September 10, 1984; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 5.4. Professional Independence of a Lawyer

Except as otherwise provided by the Rules of Court:

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

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

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;

(3) lawyers or law firms who purchase a practice from the estate of a deceased lawyer, or from any person acting in a representative capacity for a disabled or disappeared lawyer, may, pursuant to the provisions of RPC 1.17, pay to the estate or other representative of that lawyer the agreed upon price;

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

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

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

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

(d) A lawyer shall not practice with or in the form of a professional corporation, association, or limited liability entity authorized to practice law for profit, if:

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

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (a)(2) amended and paragraph (a)(3) adopted October 16, 1992, to be effective immediately; paragraph (d) amended July 10, 1998, to be effective September 1, 1998; paragraph (a) amended November 17, 2003 to be effective January 1, 2004.

RPC 5.5. Lawyers Not Admitted to the Bar of This State and the Lawful Practice of Law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) A lawyer not admitted to the Bar of this State 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 engage in the lawful practice of law in New Jersey only if:

(1) the lawyer is admitted to practice pro hac vice pursuant to R. 1:21-2 or is preparing for a proceeding in which the lawyer reasonably expects to be so admitted and is associated in that preparation with a lawyer admitted to practice in this jurisdiction;
or

(2) the lawyer is an in-house counsel and complies with R. 1:27-2; or

(3) under any of the following circumstances:

(i) the lawyer engages in the negotiation of the terms of a transaction in furtherance of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice and the transaction originates in or is otherwise related to a jurisdiction in which the lawyer is admitted to practice;

(ii) the lawyer engages in representation of a party to a dispute by participating in arbitration, mediation or other alternate or complementary dispute resolution program and the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which pro hac vice admission pursuant to R. 1:21-2 is required;

(iii) the lawyer investigates, engages in discovery, interviews witnesses or deposes witnesses in this jurisdiction for a proceeding pending or anticipated to be instituted in a jurisdiction in which the lawyer is admitted to practice;

(iv) the out-of-state lawyer's practice in this jurisdiction is occasional and the lawyer associates in the matter with, and designates and discloses to all parties in interest, a lawyer admitted to the Bar of this State who shall be held responsible for the conduct of the out-of-State lawyer in the matter; or

(v) the lawyer practices under circumstances other than (i) through (iv) above, with respect to a matter where the practice activity arises directly out of the lawyer's representation on behalf of an existing client in a jurisdiction in which the lawyer is admitted to practice, provided that such practice in this jurisdiction is occasional and is undertaken only when the lawyer's disengagement would result in substantial inefficiency, impracticality or detriment to the client.

(c) A lawyer admitted to practice in another jurisdiction who acts in this jurisdiction pursuant to paragraph (b) above shall:

(1) be licensed and in good standing in all jurisdictions of admission and not be the subject of any pending disciplinary proceedings, nor a current or pending license suspension or disbarment;

(2) be subject to the Rules of Professional Conduct and the disciplinary authority of the Supreme Court of this jurisdiction;

(3) consent in writing on a form approved by the Supreme Court to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against the lawyer or the lawyer's firm that may arise out of the lawyer's participation in legal matters in this jurisdiction, except that a lawyer who acts in this jurisdiction pursuant to subparagraph (b)(3)(ii) or (b)(3)(iii) above shall be deemed to have consented to such appointment without completing the form;

(4) not hold himself or herself out as being admitted to practice in this jurisdiction;

(5) comply with R. 1:21-1(a)(1); and

(6) except for a lawyer who acts in this jurisdiction pursuant to subparagraph (b)(3)(ii) or (b)(3)(iii) above, annually register with the New Jersey Lawyers' Fund for Client Protection and comply with R. 1:20-1(b) and (c), R. 1:28-2, and R. 1:28B-1(e) during the period of practice.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption amended, former text designated as paragraph (a), and new paragraphs (b) and (c) adopted November 17, 2003 to be effective January 1, 2004; paragraph (c) amended July 28, 2004 to be effective September 1, 2004; subparagraphs (b)(3)(ii) and (b)(3)(iii) amended, former subparagraph (b)(3)(iv) redesignated as subparagraph (b)(3)(v) and amended, new subparagraph (b)(3)(iv) adopted, and paragraph (c) and subparagraphs (c)(3) and (c)(6) amended July 23, 2010 to be effective September 1, 2010; subparagraph (b)(3)(iv) amended July 19, 2012 to be effective September 4, 2012; subparagraph (c)(5) amended July 9, 2013 to be effective September 1, 2013.

RPC 5.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

- (a) a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 6.1. Voluntary Public Interest Legal Service

Every lawyer has a professional responsibility to render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

Note: Adopted July 12, 1984 to be effective September 10, 1984; caption and text amended November 17, 2003 to be effective January 1, 2004.

RPC 6.2. Accepting Appointments

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

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Note: Adopted July 12, 1984 to be effective September 10, 1984.

RPC 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a legal services organization, other than the law firm with which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer if:

- (a) the organization complies with RPC 5.4 concerning the professional independence of its legal staff; and
- (b) when the interests of a client of the lawyer could be affected, participation is consistent with the lawyer's obligations under RPC 1.7 and the lawyer takes no part in any decision by the organization that could have a material adverse effect on the interest of a client or class of clients of the organization or upon the independence of professional judgment of a lawyer representing such a client.

Comment to RPC 6.3

The Court has adopted the recommendation of the Debevoise Committee rather than the ABA version of this rule. This follows more closely the earlier Kutak Commission version of RPC 6.3. This rule recognizes the need for private lawyers to serve in legal services organizations, so long as no conflicts of interest are involved and so long as the professional independence of the legal staff is preserved. See also RPC 6.4.

RPC 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client, except that when the organization is also a legal services organization, RPC 6.3 shall apply.

Comment to RPC 6.4

The Court has adopted the recommendation of the Debevoise Committee, which had recommended adoption of ABA Model Rule 6.4 with language added at the end so that "except when the organization is also a legal services organization, RPC 6.3 shall apply." See also RPC 6.3.

RPC 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICE

(a) A lawyer shall not make false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. A communication is false or misleading if it:

- (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;**
- (2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;**
- (3) compares the lawyer's services with other lawyers' services; or**
- (4) relates to legal fees other than:

 - (i) a statement of the fee for an initial consultation;**
 - (ii) a statement of the fixed or contingent fee charged for a specific legal service, the description of which would not be misunderstood or be deceptive;**
 - (iii) a statement of the range of fees for specifically described legal services, provided there is a reasonable disclosure of all relevant variables and considerations so that the statement would not be misunderstood or be deceptive;**
 - (iv) a statement of specified hourly rates, provided the statement makes clear that the total charge will vary according to the number of hours devoted to the matter, and in relation to the varying hourly rates charged for the services of different individuals who may be assigned to the matter;****
- (v) the availability of credit arrangements; and**
- (vi) a statement of the fees charged by a qualified legal assistance organization in which the lawyer participates for specific legal services the description of which would not be misunderstood or be deceptive.**

(b) It shall be unethical for a lawyer to use an advertisement or other related communication known to have been disapproved by the Committee on Attorney Advertising, or one substantially the same as the one disapproved, until or unless modified or reversed by the Advertising Committee or as provided by Rule 1:19-3(d).

Note: Adopted July 12, 1984, to be effective September 10, 1984; new paragraph (b) added June 26, 1987, to be effective July 1, 1987; paragraph (a) amended June 29, 1990, to be effective September 4, 1990.

Comment to RPC 7.1

This is renumbered DR 2-101, which the Court revised and adopted on January 16, 1984. What follows is the comment that accompanied that revision (see 113 N.J.L.J. 91 (1984)).

This rule governs all communications about a lawyer's services, including advertising and direct personal contact with potential clients permitted by RPC 7.2 and RPC 7.3. Whatever means are used to make known a lawyer's services, statements about them should be truthful. The prohibition in paragraph (a)(2) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts or advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without regard to the specific factual and legal circumstances.

Under this rule, any complaints regarding objectionable attorney advertising would be channeled through the existing disciplinary structure. The Court will establish a committee to assist lawyers who have questions as to the propriety of particular advertisements.

The inclusion of a requirement of "accuracy" was also considered but was deemed unnecessary. While mere technical inaccuracies will not necessarily render a communication "misleading," any significant inaccuracy that works against the interest of consumers would probably not survive the application of the "misleading" standard.

This rule contains a prohibition on advertising that compares the attorney's services with other lawyers' services. Comparative

advertising, if not inherently misleading, has a substantial probability for misleading consumers. This problem stems from the highly individualized nature of all but the most routine legal problems. Just as the U.S. Supreme Court in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), limited price advertising to routine, standardized services because of the risk of misleading consumers, so does the Court here prohibit comparative advertising. While the very nature and function of advertising may make self-laudation unavoidable, comparisons are avoidable. The public will not be served by advertising that denigrates others.

RPC 7.2 ADVERTISING

(a) Subject to the requirements of RPC 7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television, or through mailed written communication. All advertisements shall be predominantly informational. No drawings, animations, dramatizations, music, or lyrics shall be used in connection with televised advertising. No advertisement shall rely in any way on techniques to obtain attention that depend upon absurdity and that demonstrate a clear and intentional lack of relevance to the selection of counsel; included in this category are all advertisements that contain any extreme portrayal of counsel exhibiting characteristics clearly unrelated to legal competence.

(b) A copy or recording of an advertisement or written communication shall be kept for three years after its dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that: (1) a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule; (2) a lawyer may pay the reasonable cost of advertising, written communication or other notification required in connection with the sale of a law practice as permitted by RPC 1.17; and (3) a lawyer may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (a) amended December 10, 1986, to be effective December 10, 1986; paragraph (c) amended October 16, 1992, to be effective immediately.

Comment to RPC 7.2

This is renumbered DR 2-102, which the Court revised and adopted on January 16, 1984. What follows is the comment that accompanied that revision (see 113 N.J.L.J. 91, 91-92 (1984)).

To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized informational campaigns in the form of advertising.

Television is now one of the most important media for getting information to the public, particularly persons of low and moderate income. Prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public.

Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

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

Paragraph (a) permits communication by mail to a specific individual as well as general mailings, but does not permit contact by telephone or in-person delivery of written material except through the postal service or similar delivery service.

The rule requires that all advertisements about a lawyer or the lawyer's services be presented in a dignified manner, and prohibits certain modes of presentation such as music, animations, and the like. These devices would add little, if any, consumer-useful information to a communication, and are more likely to attract clients for reasons other than those that are relevant to the selection of appropriate counsel. Any consumer-useful facts that might be conveyed by the use of jingles, lyrics, cartoons and the like can be communicated freely and explicitly via the written and spoken word.

This rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive

relative to its possible benefits, and may be of doubtful constitutionality.

A lawyer is allowed to pay for advertising permitted by this rule, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, or to a public relations firm, to prepare communications permitted by this rule. No payment, however, shall be made to anyone, including a public relations firm, to obtain publicity in news articles or news broadcasts.

RPC 7.3 PERSONAL CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer may initiate personal contact with a prospective client for the purpose of obtaining professional employment, subject to the requirements of paragraph (b).

(b) A lawyer shall not contact, or send a written or electronic or other form of communication to, a prospective client for the purpose of obtaining professional employment if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer; or

(2) the person has made known to the lawyer a desire not to receive communications from the lawyer; or

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

(4) the communication involves unsolicited direct contact with a prospective client within thirty days after a specific mass-disaster event, when such contact concerns potential compensation arising from the event; or

(5) the communication involves unsolicited direct contact with a prospective client concerning a specific event not covered by section (4) of this Rule when such contact has pecuniary gain as a significant motive except that a lawyer may send a letter by regular mail to a prospective client in such circumstances provided the letter:

(i) bears the word "ADVERTISEMENT" prominently displayed in capital letters at the top of the first page of text; and

(ii) contains the following notice at the bottom of the last page of text: "Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision."; and

(iii) contains an additional notice also at the bottom of the last page of text that the recipient may, if the letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, CN 037, Trenton, New Jersey 08625.

(c) A lawyer shall not knowingly assist an organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partner, or associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, as a private practitioner, if:

(1) the promotional activity involves use of a statement or claim that is false or misleading within the meaning of RPC 7.1; or

(2) the promotional activity involves the use of coercion, duress, compulsion, intimidation, threats, unwarranted promises of benefits, overreaching, or vexatious or harassing conduct.

(d) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client except that the lawyer may pay for public communications permitted by RPC 7.1 and the usual and reasonable fees or dues charged by a lawyer referral service operated, sponsored, or approved by a bar association.

(e) A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm except as permitted by RPC 7.1. However, this does not prohibit a lawyer or the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm from being recommended, employed or paid by or cooperating with one of the following offices or organizations that promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm if there is no interference with the exercise of independent professional judgment in behalf of the lawyer's client:

(1) a legal aid office or public defender office:

- (i) operated or sponsored by a duly accredited law school.
 - (ii) operated or sponsored by a bona fide nonprofit community organization.
 - (iii) operated or sponsored by a governmental agency.
 - (iv) operated, sponsored, or approved by a bar association.
- (2) a military legal assistance office.
- (3) a lawyer referral service operated, sponsored, or approved by a bar association.
- (4) any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:
- (i) such organization, including any affiliate, is so organized and operated that no profit is derived by it from the furnishing, recommending or rendition of legal services by lawyers and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in connection with matters when such organization bears ultimate liability of its member or beneficiary.
 - (ii) neither the lawyer, nor the lawyer's partner or associate or any other lawyer or nonlawyer affiliated with the lawyer or the lawyer's firm directly or indirectly who have initiated or promoted such organization shall have received any financial or other benefit from such initiation or promotion.
 - (iii) such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.
 - (iv) the member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.
 - (v) any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, and at the member or beneficiary's own expense except where the organization's plan provides for assuming such expense, select counsel other than that furnished, selected or approved by the organization for the particular matter involved. Nothing contained herein, or in the plan of any organization that furnishes or pays for legal services pursuant to this section, shall be construed to abrogate the obligations and responsibilities of a lawyer to the lawyer's client as set forth in these Rules.
 - (vi) the lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court and other legal requirements that govern its legal service operations.
 - (vii) such organization has first filed with the Supreme Court and at least annually thereafter on the appropriate form prescribed by the Court a report with respect to its legal service plan. Upon such filing, a registration number will be issued and should be used by the operators of the plan on all correspondence and publications pertaining to the plan thereafter. Such organization shall furnish any additional information requested by the Supreme Court.
- (f) A lawyer shall not accept employment when the lawyer knows or it is obvious that the person who seeks the lawyer's services does so as a result of conduct prohibited under this Rule.**

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (b)(4) amended June 29, 1990, to be effective September 4, 1990; new paragraph (b)(4) adopted and former paragraph (b)(4) redesignated and amended as paragraph (b)(5) April 28, 1997, to be effective May 5, 1997; paragraphs (b) and (b)(5) amended July 22, 2014, to be effective September 1, 2014.

Comment to RPC 7.3

This is renumbered DR 2-103, which the Court revised and adopted on January 16, 1984, with erroneous cross-references in paragraph (c) deleted. What follows is the comment that accompanied that revision (see 113 N.J.L.J. 91, 92 (1984)).

Solicitation generally is not harmful. For example, lawyers have been and should continue to be permitted to make personal contact (1) if the prospective client is a close friend, relative, former client or one whom the lawyer reasonably believes to be a client; (2) under the auspices of a public or charitable legal services organization; or (3) under the auspices of a bona fide political, social, civic, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization.

Similarly, this rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in

establishing a group or prepaid legal plan for its members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or the lawyer's firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances the actual activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual can be compared favorably with advertising permitted under RPC 7.2.

Unrestricted solicitation, however, involves definite social harms. Among these are harassment, overreaching, provocation of nuisance litigation and schemes for systematic fabrication of claims, all of which were experienced prior to adoption of restrictions on solicitation. Measures reasonably designed to suppress these harms are constitutionally legitimate. At the same time, measures going beyond realization of such objectives would appear to be invalid under relevant decisions of the United States Supreme Court.

In determining whether a contact is permissible under RPC 7.3(b), it is relevant to consider the time and circumstances under which the contact is initiated. For example, a person undergoing active medical treatment for traumatic injury is unlikely to be in an emotional state in which reasonable judgment about employing a lawyer can be exercised.

RPC 7.4 COMMUNICATION OF FIELDS OF PRACTICE AND CERTIFICATION

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may not, however, state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law except as provided in paragraph (b) of this Rule.

(b) A lawyer may communicate that the lawyer has been certified as a specialist or certified in a field of practice only when the communication is not false or misleading, states the name of the certifying organization, and states that the certification has been granted by the Supreme Court of New Jersey or by an organization that has been approved by the American Bar Association. If the certification has been granted by an organization that has not been approved, or has been denied approval, by the Supreme Court of New Jersey or the American Bar Association, the absence or denial of such approval shall be clearly identified in each such communication by the lawyer.

Note: Adopted July 12, 1984, to be effective September 10, 1984; former rule amended and designated paragraph (a) and new paragraph (b) adopted July 15, 1993, to be effective September 1, 1993.

Comment to RPC 7.4

This is renumbered DR 2-104, which the Court revised and adopted on January 16, 1984. What follows is the comment that accompanied that revision (see 113 N.J.L.J. 91, 92-93 (1984)).

The public has a legitimate interest in knowing in what areas of the law a lawyer practices.

This rule permits a lawyer to indicate areas of practice in communications about the lawyer's services, for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. Stating that the lawyer's practice is "limited to" or "concentrated in" particular fields is permitted except where the Court has designated areas of specialty certification. In those areas, only certified attorneys may list their practice as limited to the designated specialty.

RPC 7.5 FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates RPC 7.1. Except for organizations referred to in R. 1:21-1(d), the name under which a lawyer or law firm practices shall include the full or last names of one or more of the lawyers in the firm or office or the names of a person or persons who have ceased to be associated with the firm through death or retirement.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction. In New Jersey, identification of all lawyers of the firm, in advertisements, on letterheads or anywhere else that the firm name is used, shall indicate the jurisdictional limitations on those not licensed to practice in New Jersey. Where the name of an attorney not licensed to practice in this State is used in a firm name, any advertisement, letterhead or other communication containing the firm name must include the name of at least one licensed New Jersey attorney who is responsible for the firm's New Jersey practice or the local office thereof.

(c) A firm name shall not contain the name of any person not actively associated with the firm as an attorney, other than that of a person or persons who have ceased to be associated with the firm through death or retirement.

(d) Lawyers may state or imply that they practice in a partnership only if the persons designated in the firm name and the principal members of the firm share in the responsibility and liability for the firm's performance of legal services.

(e) A law firm name may include additional identifying language such as "& Associates" only when such language is accurate and descriptive of the firm. Any firm name including additional identifying language such as "Legal Services" or other similar phrases shall inform all prospective clients in the retainer agreement or other writing that the law firm is not affiliated or associated with a public, quasi-public or charitable organization. However, no firm shall use the phrase "legal aid" in its name or in any additional identifying language.

(f) In any case in which an organization practices under a trade name as permitted by paragraph (a) above, the name or names of one or more of its principally responsible attorneys, licensed to practice in this State, shall be displayed on all letterheads, signs, advertisements and cards or other places where the trade name is used.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraphs (a) and (d) amended, paragraph (e) amended and redesignated as paragraph (f) and new paragraph (e) added June 29, 1990, to be effective September 4, 1990.

Comment to RPC 7.5

This is renumbered DR 2-105, which the Court revised and adopted on January 16, 1984. What follows is the comment that accompanied that revision (see 113 N.J.L.J. 91, 93 (1984)).

This rule requires that the name under which a firm operates must contain the full or last names of one or more of the lawyers in the firm or office. Firms may retain the names of deceased or retired members provided that the status of those members is clearly set forth. Except for nonprofit legal aid or public interest law firms, the rule does not permit the use of a name that contains anything other than the name or names of individual lawyers. Although "Smith and Jones" would be acceptable, "The Jones Law Clinic" or "National Legal Services" would not be.

Paragraph (b) provides that law firms from other jurisdictions with offices in New Jersey may use, subject to paragraph (a), a firm name that includes the names of non-New Jersey attorneys. In order to do so, the jurisdictional limitations of practice for those named members of the firm not admitted in New Jersey must be set forth. In addition, when the name of an attorney not licensed in New Jersey is used in any firm name, all advertisements, letterheads or other communications must include the name of at least one attorney who is licensed in New Jersey. The person named must be responsible for the firm's New Jersey practice or a local office in this State. The intent of the rule is to make it clear that consumers are entitled to know with whom they will be dealing. Furthermore, they must know that legal work generated in New Jersey will be handled by lawyers admitted to the bar of this State.

All offices maintained by multi-jurisdiction firms will have to meet the bona fide office requirements of R. 1:21-1(a) and *In re Sackman*, 90 N.J. 521 (1982).

RPC 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

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

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

Comment to RPC 8.1

The Court has adopted ABA Model Rule 8.1 rather than the differing language recommended by the Debevoise Committee. The adopted rule applies to applicants for admission to the bar as well as to attorneys in connection with admission proceedings or disciplinary matters.

RPC 8.2 JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge, adjudicatory officer or other public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who has been confirmed for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Comment to RPC 8.2

The Court has adopted the recommendation of the Debevoise Committee, but has deleted the reference in paragraph (b) to "nomination" for judicial office. This differs from ABA Model Rule 8.2(b), which refers to "candidates for judicial office."

RPC 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by RPC 1.6.

(d) Paragraph (a) of this Rule shall not apply to knowledge obtained as a result of participation in a Lawyers Assistance Program established by the Supreme Court and administered by the New Jersey State Bar Association, except as follows:

(i) if the effect of discovered ethics infractions on the practice of an impaired attorney is irreparable or poses a substantial and imminent threat to the interests of clients, then attorney volunteers, peer counselors, or program staff have a duty to disclose the infractions to the disciplinary authorities, and attorney volunteers have the obligation to apply immediately for the appointment of a conservator, who also has the obligation to report ethics infractions to disciplinary authorities; and

(ii) attorney volunteers or peer counselors assisting the impaired attorney in conjunction with his or her practice have the same responsibility as any other lawyer to deal candidly with clients, but that responsibility does not include the duty to disclose voluntarily, without inquiry by the client, information of past violations or present violations that did not or do not pose a serious danger to clients.

Note: Adopted July 12, 1984, to be effective September 10, 1984; new paragraph (d) adopted October 5, 1993, to be effective immediately.

Comment to RPC 8.3

As recommended by the Debevoise Committee, the Court has adopted ABA Model Rule 8.3. This rule in no way reduces the present obligation to report such judicial and attorney ethical violations.

RPC 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

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

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

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

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

(e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law;

(g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.

Note: Adopted July 12, 1984, to be effective September 10, 1984; paragraph (g) adopted July 18, 1990, to be effective September 4, 1990; paragraph (g) amended May 3, 1994, to be effective September 1, 1994.

Comment by Supreme Court

This rule amendment (the addition of paragraph g) is intended to make discriminatory conduct unethical when engaged in by lawyers in their professional capacity. It would, for example, cover activities in the court house, such as a lawyer's treatment of court support staff, as well as conduct more directly related to litigation; activities related to practice outside of the court house, whether or not related to litigation, such as treatment of other attorneys and their staff; bar association and similar activities; and activities in the lawyer's office and firm. Except to the extent that they are closely related to the foregoing, purely private activities are not intended to be covered by this rule amendment, although they may possibly constitute a violation of some other ethical rule. Nor is employment discrimination in hiring, firing, promotion, or partnership status intended to be covered unless it has resulted in either an agency or judicial determination of discriminatory conduct. The Supreme Court believes that existing agencies and courts are better able to deal with such matters, that the disciplinary resources required to investigate and prosecute discrimination in the employment area would be disproportionate to the benefits to the system given remedies available elsewhere, and that limiting ethics proceedings in this area to cases where there has been an adjudication represents a practical resolution of conflicting needs.

"Discrimination" is intended to be construed broadly. It includes sexual harassment, derogatory or demeaning language, and, generally, any conduct towards the named groups that is both harmful and discriminatory.

Case law has already suggested both the area covered by this amendment and the possible direction of future cases. In *re Vincenti*, 114 N.J. 275 (554 A.2d 470) (1989). The Court believes the administration of justice would be better served, however, by the adoption of this general rule than by a case by case development of the scope of the professional obligation.

While the origin of this rule was a recommendation of the Supreme Court's Task Force on Women in the Courts, the Court concluded that the protection, limited to women and minorities in that recommendation, should be expanded. The groups covered in the initial proposed amendment to the rule are the same as those named in Canon 3A(4) of the Code of Judicial Conduct.

Following the initial publication of this proposed subsection (g) and receipt of various comments and suggestions, the Court revised the proposed amendment by making explicit its intent to limit the rule to conduct by attorneys in a professional capacity, to exclude employment discrimination unless adjudicated, to restrict the scope to conduct intended or likely to cause harm, and to include discrimination because of sexual orientation or socioeconomic status, these categories having been proposed by the ABA's Standing Committee on Ethics and Professional Responsibility as additions to the groups now covered in Canon 3A(4) of the New Jersey Code of Judicial Conduct. That Committee has also proposed that judges require attorneys, in proceedings before a judge, refrain from manifesting by words or conduct any bias or prejudice based on any of these categories. See proposed Canon 3A(6). This revision to the RPC further reflects the Court's intent to cover all discrimination where the attorney intends to cause harm such as inflicting emotional distress or obtaining a tactical advantage and not to cover instances when no harm is intended unless its occurrence is likely regardless of intent, e.g., where discriminatory comments or behavior is repetitive. While obviously the language of the rule cannot explicitly cover every instance of possible discriminatory conduct, the Court believes that, along with existing case law, it sufficiently narrows the breadth of the rule to avoid any suggestion that it is overly broad. See, e.g., *In re Vincenti*, 114 N.J. 275 (554 A.2d 470) (1989).

Comment to RPC 8.4

The Court has adopted ABA Model Rule 8.4, which defines "professional misconduct." The Debevoise Committee had recommended adoption of an earlier version containing two additional paragraphs, but the provisions of those paragraphs are included in ABA Model Rule 5.5 ("Unauthorized Practice of Law"), which the Court has adopted as RPC 5.5.

RPC 8.5 JURISDICTION

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

Comment to RPC 8.5

While the Debevoise Committee recommended against adoption of this rule, the Court has adopted ABA Model Rule 8.5 because, even though it had no counterpart in the former Disciplinary Rules, it codifies the existing New Jersey rule in the Rules of Professional Conduct. In its written comments submitted to the Court, the NJSBA had recommended inclusion of a jurisdictional RPC containing the pertinent provisions of R. 1:20-1.

ATTORNEY ADVERTISING GUIDELINES AS APPROVED BY THE SUPREME COURT OF NEW JERSEY

Attorney Advertising Guideline 1

In any advertisement by an attorney or law firm, the advertisement shall include the bona fide street address of the attorney or

law firm.

[Attorney Advertising Guideline 2](#)

[Attorney Advertising Guideline 3](#)

Note: Adopted June 29, 1990, to be effective September 4, 1990.

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