



**LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET OO
CO-COUNSELING IN A PRO BONO CASE**

Worksheet OO is intended to facilitate a discussion about co-counseling. In addition to a discussion, a new lawyer and mentor may choose to co-counsel **in a pro bono case**, if they follow the steps below.

- Follow this checklist for determining whether to co-counsel with your mentoring partner:
 - Determine whether one attorney has expertise that will further the representation and that one attorney will gain important legal skills while also helping to serve the needs of the underrepresented. See Prof. Cond. R. 1.1, especially comments 2 and 5.
 - Make sure that the new lawyer and the mentor, as well as their respective employers, are comfortable with the idea of co-counseling in a pro bono case. If so, the best way to find a pro bono case is to contact a local pro bono provider as identified at www.ohioprobono.org.
 - After you have found a potential pro bono client or project, determine whether any conflict of interest exists. See Prof. Cond. R. 1.7 – 1.12 and 1.18. Follow the conflict of interest rules articulated in the attached materials excerpted from the Louisiana State Bar Association’s *Practice Aid Guide: The Essentials of Law Office Management* and compare it to Ohio’s disciplinary rules. Louisiana State Bar Association, *Practice Aid Guide: The Essentials of Law Office Management*, 2007.
 - Discuss the scope of representation within the parameters of Prof. Cond. R. 1.2.
 - Address the malpractice insurance requirements of Prof. Cond. R. 1.4. Disclose the amount of malpractice insurance that you carry to your mentoring partner. If a lawyer does not have malpractice insurance, the client’s written acknowledgement of that fact is required pursuant to Prof. Cond. R. 1.4; however, legal aid malpractice insurance usually covers pro bono lawyers who volunteer at legal aid brief advice and information clinics or accept a case for extended representation. Bar associations with organized pro bono programs also usually provide malpractice insurance coverage for pro bono volunteers, as well. While you should have your own malpractice insurance, you still should check with any pro bono program to verify malpractice insurance



coverage before accepting a case or providing legal information and advice at a pro bono clinic.

- Discuss the division of fees between the mentor and new lawyer in Prof. Cond. R. 1.5 with special attention to comment 7. Although no fees will be generated by co-counseling on a pro bono case, the new lawyer should be familiar with the ethical parameters for such a typical co-counseling arrangement. Keeping track of billing will not only give you the opportunity to discuss that necessary task with your mentoring partner but it will be a necessary document should you prevail in a pro bono case that entitles the prevailing party to attorney's fees.
- Review Gov. Bar R. X, Section 5 regarding the opportunity to earn CLE credits for pro bono service. **Be advised, however, that no mentoring participants may earn CLE credit for pro bono service completed during the mentoring term, as they are already receiving CLE credit for their participation in the mentoring program.**
- If you and your mentoring partner decide to co-counsel in a pro bono case, draft a co-counseling agreement. You may consult the co-counseling agreement sample supplied with the materials for this worksheet.
- The mentor and new lawyer must discuss the pro bono co-counseling arrangement with the client, carefully explaining all of the points and considerations listed above. If the client agrees to the arrangement, the client shall be presented with a written copy of the agreement for his or her review.
- Obtain client's informed consent to the co-counseling arrangement in writing by having the pro bono client sign the co-counseling agreement. If you are co-counseling in a case assigned by a pro bono provider, ask for their pro bono engagement form and complete this, as well. A [sample form](#) from is provided in the materials for this worksheet.



RESOURCES

OHIO RULES OF PROFESSIONAL CONDUCT

I. CLIENT-LAWYER RELATIONSHIP

RULE 1.1: COMPETENCE

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

Comment

Legal Knowledge and Skill

* **

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

necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

* **

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement

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between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c). The lawyer should consult with the client about the degree of thoroughness and the level of preparation required, as well as the estimated costs involved under the circumstances.

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<http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf>

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies:

- (1) the representation of that client will be directly adverse to another current client;
- (2) there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests.

(b) A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created pursuant to division (a) of this rule, unless all of the following apply:

- (1) the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) each affected client gives informed consent, confirmed in writing;
- (3) the representation is not precluded by division (c) of this rule.

(c) Even if each affected client consents, the lawyer shall not accept or continue the representation if either of the following applies:

- (1) the representation is prohibited by law;
- (2) the representation would involve the assertion of a claim by one client against another client represented by the lawyer in the same proceeding.



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RULE 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 all of the following apply:

(1) the transaction and terms on which the lawyer acquires the interest are fair and *reasonable* to the client and are fully disclosed to the client in *writing* in a manner that can be *reasonably* understood by the client;

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

(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 gives *informed consent*.

(c) A lawyer shall not solicit any *substantial* gift from a client. A lawyer shall not prepare on behalf of a client an instrument giving the lawyer, the lawyer's *partner*, associate, paralegal, law clerk, or other employee of the lawyer's *firm*, a lawyer acting "of counsel" in the lawyer's *firm*, or a person related to the lawyer any gift unless the lawyer or other recipient of the gift is related to the client. For purposes of division (c) of this rule:

(1) "person related to the lawyer" includes a spouse, child, grandchild, parent, grandparent, sibling, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship;

(2) "gift" includes a testamentary gift.



(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 a lawyer may do either of the following:

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

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

(f) A lawyer shall not accept compensation for representing a client from someone other than the client unless divisions (f)(1) to (3) and, if applicable, division (f)(4) apply:

(1) the client gives *informed consent*;

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

(3) information relating to representation of a client is protected as required by [Rule 1.6](#);

(4) if the lawyer is compensated by an insurer to represent an insured, the lawyer delivers a copy of the following Statement of Insured Client's Rights to the client in person at the first meeting or by mail within ten days after the lawyer receives notice of retention by the insurer:

STATEMENT OF INSURED CLIENT'S RIGHTS

An insurance company has retained a lawyer to defend a lawsuit or claim against you. This Statement of Insured Client's Rights is being given to you to assure that you are aware of your rights regarding your legal representation.

1. Your Lawyer: Your lawyer has been retained by the insurance company under the terms of your policy. If you have questions about the selection of the lawyer, you should discuss the matter with the insurance company or the lawyer.

2. Directing the Lawyer: Your policy may provide that the insurance company can reasonably control the defense of the lawsuit. In addition, your insurance company may establish guidelines governing how lawyers are to proceed in defending you—guidelines that you are entitled to



know. However, the lawyer cannot act on the insurance company's instructions when they are contrary to your interest.

3. Communications: Your lawyer should keep you informed about your case and respond to your reasonable requests for information.

4. Confidentiality: Lawyers have a duty to keep secret the confidential information a client provides, subject to limited exceptions. However, the lawyer chosen to represent you also may have duty to share with the insurance company information relating to the defense or settlement of the claim. Whenever a waiver of lawyer-client confidentiality is needed, your lawyer has a duty to consult with you and obtain your informed consent.

5. Release of Information for Audits: Some insurance companies retain auditing companies to review the billing and files of the lawyers they hire to represent policyholders. If the lawyer believes an audit, bill review, or other action initiated by the insurance company may release confidential information in a manner that may be contrary to your interest, the lawyer must advise you regarding the matter and provide an explanation of the purpose of the audit and the procedure involved. Your written consent must be given in order for an audit to be conducted. If you withhold your consent, the audit shall not be conducted.

6. Conflicts of Interest: The lawyer is responsible for identifying conflicts of interest and advising you of them. If at any time you have a concern about a conflict of interest in your case, you should discuss your concern with the lawyer. If a conflict of interest exists that cannot be resolved, the insurance company may be required to provide you with another lawyer.

7. Settlement: Many insurance policies state that the insurance company alone may make a decision regarding settlement of a claim. Some policies, however, require your consent. You should discuss with your lawyer your rights under the policy regarding settlement. No settlement requiring you to pay money in excess of your policy limits can be reached without your agreement.

8. Fees and Costs: As provided in your insurance policy, the insurance company usually pays all of the fees and costs of defending the claim. If you are responsible for paying the lawyer any fees and costs, your lawyer must promptly inform you of that.

9. Hiring your own Lawyer: The lawyer hired by the insurance company is only representing you in defending the claim brought against you. If you desire to pursue a claim against someone, you will need to hire your own lawyer. You may also wish to hire your own lawyer if there is a risk that there might be a judgment entered against you for more than the amount of your insurance.



Your lawyer has a duty to inform you of this risk and other reasonably foreseeable adverse results.

(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 nolo contendere pleas, unless the settlement or agreement is subject to court approval or each client gives *informed consent*, in a *writing* signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement or agreement.

(h) A lawyer shall not do any of the following:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice or requiring arbitration of a claim against the lawyer unless the client is independently represented in making the agreement;

(2) settle a claim or potential claim for such liability unless all of the following apply:

(i) the settlement is not unconscionable, inequitable, or unfair;

(ii) the client or former client is advised in *writing* of the desirability of seeking and is given a *reasonable* opportunity to seek the advice of independent legal counsel in connection therewith;

(iii) the client or former client gives *informed consent*.

(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 do either of the following:

(1) acquire a lien authorized 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) A lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a *firm*, a prohibition in divisions (a) to (i) of this rule that applies to any one of them shall apply to all of them.



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RULE 1.9: DUTIES TO FORMER CLIENTS

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

(b) Unless the former client gives *informed consent, confirmed in writing*, 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 where both of the following apply:

(1) the interests of the client are materially adverse to that person;

(2) the lawyer had acquired information about the client that is protected by [Rules 1.6](#) and 1.9(c) and material to the matter.

(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 do either of the following:

(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*;

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

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RULE 1.10: IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a *firm*, none of them shall represent a client when the lawyer *knows* or *reasonably should know* that any one of them practicing alone would be prohibited from doing so by [Rule 1.7](#) or [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 is no longer associated with a *firm*, no lawyer in that *firm* shall thereafter represent a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the *firm*, if the lawyer *knows* or *reasonably should know* that either of the following applies:

(1) the formerly associated lawyer represented the client in the same or a *substantially related matter*;

(2) any lawyer remaining in the *firm* has information protected by [Rules 1.6](#) and [1.9](#)(c) that is material to the matter.

(c) When a lawyer has had *substantial* responsibility in a matter for a former client and becomes associated with a new *firm*, no lawyer in the new *firm* shall *knowingly* represent, in the same matter, a person whose interests are materially adverse to the interests of the former client.

(d) In circumstances other than those covered by [Rule 1.10](#) (c), when a lawyer becomes associated with a new *firm*, no lawyer in the new *firm* shall *knowingly* represent a person in a matter in which the lawyer is personally disqualified under [Rule 1.9](#) unless both of the following apply:

(1) the new *firm* timely *screens* the personally disqualified lawyer from any participation in the matter and that lawyer is apportioned no part of the fee from that matter;

(2) *written* notice is given as soon as practicable to any affected former client.

(e) A disqualification required by this rule may be waived by the affected client under the conditions stated in [Rule 1.7](#).

(f) The disqualification of lawyers associated in a *firm* with former or current government lawyers is governed by [Rule 1.11](#).



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RULE 1.11: SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) A lawyer who has formerly served as a public officer or employee of the government shall comply with both of the following:

(1) all applicable laws and [Rule 1.9](#) (c) regarding conflicts of interest;

(2) not otherwise represent a client in connection with a matter in which the lawyer participated personally and *substantially* as a public officer or employee, unless the appropriate government agency gives its *informed consent, confirmed in writing*, to the representation.

(b) When a lawyer is disqualified from representation under division (a), no lawyer in a *firm* with which that lawyer is associated may *knowingly* undertake or continue representation in such a matter unless both of the following apply:

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

(2) *written* notice is given as soon as practicable to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer *knows* is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this rule, the term “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. A *firm* with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely *screened* from any participation in the matter and is apportioned no part of the fee therefrom.



(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee shall comply with both of the following:

(1) [Rules 1.7](#) and [1.9](#);

(2) shall not do either of the following:

(i) participate in a matter in which the lawyer participated personally and *substantially* while in private practice or nongovernmental employment, unless the appropriate government agency gives its *informed consent, confirmed in writing*;

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and *substantially*, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by [Rule 1.12](#)(b) and subject to the conditions stated in [Rule 1.12](#)(b).

(e) As used in this rule, the term “matter” includes both of the following:

(1) 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;

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

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RULE 1.12: FORMER JUDGE, ARBITRATOR, MEDIATOR, OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in division (d), 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 or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give *informed consent, confirmed in writing*.

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



lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and *substantially*, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by division (a), no lawyer in a *firm* with which that lawyer is associated may *knowingly* undertake or continue representation in the matter unless both of the following apply:

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

(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.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

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RULE 1.18: DUTIES TO PROSPECTIVE CLIENT

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to division (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in division (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in division (d).



- (d) When the lawyer has received disqualifying information as defined in division (c), representation is permissible if either of the following applies:
- (1) both the affected client and the prospective client have given informed consent, confirmed in writing;
 - (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client, and both of the following apply:
 - (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;
 - (ii) written notice is promptly given to the prospective client.

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**RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY
BETWEEN CLIENT AND LAWYER**

- (a) Subject to divisions (c), (d), and (e) of this rule, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer does not violate this rule by acceding to requests of opposing counsel that do not prejudice the rights of the client, being punctual in fulfilling all professional commitments, avoiding offensive tactics, and treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision as to a plea to be entered, whether to waive a jury trial, and whether the client will testify.
- (b) [RESERVED]
- (c) A lawyer may limit the scope of a new or existing representation if the limitation is *reasonable* under the circumstances and communicated to the client, preferably in *writing*.



(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer *knows* is *illegal* or *fraudulent*. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.

(e) Unless otherwise required by law, a lawyer shall not present, participate in presenting, or threaten to present criminal charges or professional misconduct allegations solely to obtain an advantage in a civil matter.

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RULE 1.4: COMMUNICATION

(a) A lawyer shall do all of the following:

(1) promptly inform the client of any decision or circumstance with respect to which the client's *informed consent* is required by these rules;

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

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

(4) comply as soon as practicable with *reasonable* requests for information from the client;

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer *knows* that the client expects assistance not permitted by the Ohio Rules of Professional Conduct or other law.

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

(c) A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or if the lawyer's professional liability insurance is



terminated. The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client.

- (1) A lawyer shall maintain a copy of the notice signed by the client for five years after termination of representation of the client.
- (2) A lawyer who is involved in the division of fees pursuant to Rule 1.5(e) shall inform the client as required by division (c) of this rule before the client is asked to agree to the division of fees.
- (3) The notice required by division (c) of this rule shall not apply to either of the following:
 - (i) A lawyer who is employed by a governmental entity and renders services pursuant to that employment;
 - (ii) A lawyer who renders legal services to an entity that employs the lawyer as in-house counsel.²⁰

NOTICE TO CLIENT

Pursuant to Rule 1.4 of the Ohio Rules of Professional Conduct, I am required to notify you that I do not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.

Attorney's Signature

CLIENT ACKNOWLEDGEMENT

I acknowledge receipt of the notice required by Rule 1.4 of the Ohio Rules of Professional Conduct that [insert attorney's name] does not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.

Client's Signature

Date

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RULE 1.5: FEES AND EXPENSES

(a) A lawyer shall not make an agreement for, charge, or collect an *illegal* or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a *reasonable* fee. 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) The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in *writing*, before or within a *reasonable* time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in *writing*.

(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 division (d) of this rule or other law.

- (1) Each contingent fee agreement shall be in a *writing* signed by the client and the lawyer 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. The agreement shall clearly 24

notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

(2) If the lawyer becomes entitled to compensation under the contingent fee agreement and the lawyer will be disbursing funds, the lawyer shall prepare a closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under the agreement. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyer's fees with a lawyer not in the same *firm*, as required in division (e)(3) of this rule. The closing statement shall be signed by the client and lawyer.

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

(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 spousal or child support, or property settlement in lieu thereof;

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

(3) a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is simultaneously advised in *writing* that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule.

(e) Lawyers who are not in the same *firm* may divide fees only if all of the following apply:

(1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client;

(2) the client has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation;

(3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule;25



(4) the total fee is *reasonable*.

(f) In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration.

Comment 7

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial lawyer. Division (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. Within a reasonable time after disclosure of the identity of each lawyer, the client must give written approval that the fee will be divided and that the division of fees is in proportion to the services performed by each lawyer or that each lawyer assumes joint responsibility for the representation. Except where court approval of the fee division is obtained, closing statements must be in a writing signed by the client and each lawyer and must otherwise comply with division (c) of this rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rules 1.1 and 1.17.

View other comments at

<http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf>

SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO
RULE X. CONTINUING LEGAL EDUCATION
Section 5 – Allowance of Credit Hours

* * * *

(H) *Pro bono credit*. The Commission may allow one credit hour for every six hours of pro bono legal service performed, with a maximum of six credit hours for service performed during a biennial compliance period. As used in this rule, “pro bono” means legal service provided to



either a person of limited means or a charitable organization in which the legal service is assigned, verified, and reported to the Commission by any of the following:

- (1) An organization receiving funding for pro bono programs or services from the Legal Services Corporation or the Ohio Legal Assistance Foundation;
- (2) A metropolitan or county bar association;
- (3) The Ohio State Bar Association;
- (4) The Ohio Legal Assistance Foundation;
- (5) Any other organization recognized by the Commission as providing pro bono programs or services in Ohio.

PRO BONO PROJECT ENGAGEMENT AGREEMENT

(SAMPLE – Please check with local pro bono provider for their version)

THE LEGAL AID SOCIETY OF _____ AND I AGREE THAT the *Pro Bono* (Volunteer) Attorney listed below will assist me in the following manner:

I understand that the volunteer attorney listed below has received this case from The Legal Aid Society of _____ and he/she is not a staff attorney with the Legal Aid Society. I also understand that you do not and cannot guarantee the outcome of my case.

1. You won't charge me for your services. If the law says my opponent can be made to pay attorney fees for your work, I will help you seek those fees. If the court orders my opponent to pay attorney fees for your work, those fees may be paid directly to you and will belong to you.
2. I will pay for court costs, such as filing fees, whether my case is won or lost, unless we can get the other side to pay. I understand you or The Legal Aid Society may help pay some of these costs and fees for me when I can't. I understand I am obligated to repay you. If you recover damages or back benefits that I am owed, I will repay you out of my award.
3. You won't make an agreement with the other side (settle my case) for something different than what I have told you I will accept. I will not settle the case on my own without talking to you first.
4. You will keep me informed about the status of my case.
5. I can tell you to stop representing me whenever I want.
6. You can stop representing me if I don't cooperate with you, if I fail to attend a hearing, if I don't tell you about changes in my phone number, address, or income, if I no longer qualify for legal aid, or for any other reason allowed by the rules governing lawyers. If time and circumstances permit, you will give me a chance to tell my side of the story before you quit representing me.
7. You may appeal my case only if I say so. I understand that you will not automatically appeal my case if I lose, and may decide not to appeal my case.
8. I can complain if I don't like the work being done on my case, or if you tell me you are going to stop representing me. I have received a separate notice that tells me how to complain.
9. I won't talk to the other side or their lawyer without your approval, and will call you right away if they try to talk to me.
10. Everything I have told you about me and my case is true as far as I know.
11. You will destroy my file seven years after the case has been completed.
12. I have been given a copy of this form to keep.

I HAVE READ THIS AGREEMENT, OR HAVE HAD IT READ TO ME, AND UNDERSTAND AND AGREE TO ITS TERMS.

Pro Bono/Volunteer Attorney - For Legal Aid

Client

Date

Date