

**PROPOSED AMENDMENTS TO THE OHIO RULES OF
PROFESSIONAL CONDUCT AND SUPREME COURT RULES FOR THE
GOVERNMENT OF THE BAR OF OHIO**

Comments Requested: The Supreme Court of Ohio will accept public comments until October 15, 2014, on the following proposed amendments to the Ohio Rules of Professional Conduct and Supreme Court Rules for the Government of the Bar of Ohio.

Comments on the proposed amendments should be submitted in writing to: Rick Dove, Secretary to the Board of Commissioners on Grievances and Discipline, Supreme Court of Ohio, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431, or rick.dove@sc.ohio.gov not later than October 15, 2014. Please include your full name and mailing address in any comments submitted by e-mail.

Key to Proposed Amendment:

1. Existing language appears in regular type. Example: text
2. Existing language to be deleted appears in strikethrough. Example: ~~text~~
3. New language to be added appears in underline. Example: text

47 any contact with any firm files or other ~~materials~~ information, including information in electronic
48 form, relating to the matter, written notice and instructions to all other firm personnel forbidding
49 any communication with the screened lawyer relating to the matter, denial of access by the
50 screened lawyer to firm files or other ~~materials~~ information, including information in electronic
51 form, relating to the matter, and periodic reminders of the screen to the screened lawyer and all
52 other firm personnel.

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54 * * *

55 56 I. CLIENT-LAWYER RELATIONSHIP

57 58 59 RULE 1.1: COMPETENCE

60
61 [No amendments to the black-letter rule]

62 63 Comment

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65 * * *

66 67 Retaining or Contracting with Other Lawyers

68
69 [6] Before a lawyer retains or contracts with another lawyer outside the lawyer's own
70 firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily
71 obtain informed consent from the client and must reasonably believe that the other lawyer's
72 services will contribute to the competent and ethical representation of the client. See also Rule
73 1.2, 1.4, 1.5(e), 1.6, and 5.5(a). The reasonableness of the decision to retain or contract with
74 another lawyer outside the lawyer's own firm will depend on the circumstances, including the
75 education, experience, and reputation of the nonfirm lawyer, the nature of the services assigned
76 to the nonfirm lawyer, and the legal protections, professional conduct rules, and ethical
77 environments of the jurisdiction in which the services will be performed, particularly relating to
78 confidential information. The decision to contract with a lawyer for purposes other than the
79 provision of legal services, such to serve as an expert witness, may be governed by other rules.
80 See Rule 1.4 and 1.5.

81
82 [7] When lawyers from more than one law firm are providing legal services to the
83 client on a particular matter, the lawyers should ordinarily consult with each other and the client
84 about the scope of their respective representations and the allocation of responsibility between or
85 among them. See Rule 1.2. When making allocations of responsibility in a matter pending
86 before a tribunal, lawyers and parties may have additional obligations that are a matter of law
87 and beyond the scope of these rules.

88 89 Maintaining Competence

90
91 [6] [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of
92 changes in the law and its practice, including the benefits and risks associated with relevant

93 technology, engage in continuing study and education and comply with all continuing legal
94 education requirements to which the lawyer is subject.

95 * * *

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98 **RULE 1.4: COMMUNICATION**

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100 [No amendments to the black-letter rule]

101
102 **Comment**

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107 [4] A lawyer's regular communication with clients will minimize the occasions on
108 which a client will need to request information concerning the representation. When a client
109 makes a reasonable request for information, however, division (a)(4) requires prompt compliance
110 with the request, or if a prompt response is not feasible, that the lawyer, or a member of the
111 lawyer's staff, acknowledge receipt of the request and advise the client when a response may be
112 expected. ~~Client telephone calls should be promptly returned or acknowledged~~ A lawyer should
113 promptly respond to or acknowledge client communications.

114 * * *

115
116
117 **RULE 1.6: CONFIDENTIALITY OF INFORMATION**

118
119 (a) A lawyer shall not reveal information relating to the representation of a
120 client, including information protected by the attorney-client privilege under applicable
121 law, unless the client gives *informed consent*, the disclosure is impliedly authorized in
122 order to carry out the representation, or the disclosure is permitted by division (b) or
123 required by division (c) of this rule.

124
125 (b) A lawyer may reveal information relating to the representation of a client,
126 including information protected by the attorney-client privilege under applicable law, to
127 the extent the lawyer *reasonably believes* necessary for any of the following purposes:

128
129 (1) to prevent reasonably certain death or substantial bodily harm;

130
131 (2) to prevent the commission of a crime by the client or other person;

132
133 (3) to mitigate *substantial* injury to the financial interests or property of
134 another that has resulted from the client's commission of an *illegal* or *fraudulent*
135 act, in furtherance of which the client has used the lawyer's services;

136
137 (4) to secure legal advice about the lawyer's compliance with these
138 rules;

139
140 (5) to establish a claim or defense on behalf of the lawyer in a
141 controversy between the lawyer and the client, to establish a defense to a
142 criminal charge or civil claim against the lawyer based upon conduct in which the
143 client was involved, or to respond to allegations in any proceeding, including any
144 disciplinary matter, concerning the lawyer's representation of the client;

145
146 (6) to comply with other law or a court order;

147
148 (7) to detect and resolve conflicts of interest arising from the lawyer's
149 change of employment or from changes in the composition or ownership of a
150 firm, but only if the revealed information would not compromise the attorney-
151 client privilege or otherwise prejudice the client.

152
153 (c) A lawyer shall make reasonable efforts to prevent the inadvertent or
154 unauthorized disclosure of or unauthorized access to information related to the
155 representation of a client.

156
157 (d) A lawyer shall reveal information relating to the representation of a client,
158 including information protected by the attorney-client privilege under applicable law, to
159 the extent the lawyer *reasonably believes* necessary to comply with Rule 3.3 or 4.1.

160
161 **Comment**

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163 * * *

164
165 **Detection of Conflicts of Interest**

166
167 [13] Division (b)(7) recognizes that lawyers in different firms may need to disclose
168 limited information to each other to detect and resolve conflicts of interest, such as when a
169 lawyer is considering an association with another firm, two or more firms are considering a
170 merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [7].
171 Under these circumstances, lawyers and law firms are permitted to disclose limited information,
172 but only once substantive discussions regarding the new relationship have occurred. Any such
173 disclosure should ordinarily include no more than the identity of the persons and entities
174 involved in a matter, a brief summary of the general issues involved, and information about
175 whether the matter has terminated. Even this limited information should be disclosed only to the
176 extent reasonably necessary to detect and resolve conflicts of interest that might arise from the
177 possible new relationship. Moreover, the disclosure of any information is prohibited if it would
178 compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a
179 corporate client is seeking advice on a corporate takeover that has not been publicly announced;
180 that a person has consulted a lawyer about the possibility of a divorce before the person's
181 intentions are known to the person's spouse; or that a person has consulted a lawyer about a
182 criminal investigation that has not led to a public charge). Under those circumstances, division
183 (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's

184 fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an
185 association with another firm and is beyond the scope of these rules.

186
187 [14] Any information disclosed pursuant to division (b)(7) may be used or further
188 disclosed only to the extent necessary to detect and resolve conflicts of interest. Division (b)(7)
189 does not restrict the use of information acquired by means independent of any disclosure
190 pursuant to division (b)(7). Division (b)(7) also does not affect the disclosure of information
191 within a law firm when the disclosure is otherwise authorized, such as when a lawyer in a firm
192 discloses information to another lawyer in the same firm to detect and resolve conflicts of
193 interest that could arise in connection with undertaking a new representation. See Comment [5].

194
195 ~~[13]~~ [15] A lawyer may be ordered to reveal information relating to the representation of
196 a client by a court or by another tribunal or governmental entity claiming authority pursuant to
197 other law to compel the disclosure. Absent informed consent of the client to do otherwise, the
198 lawyer should assert on behalf of the client all nonfrivolous claims that the order is not
199 authorized by other law or that the information sought is protected against disclosure by the
200 attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer
201 must consult with the client about the possibility of appeal to the extent required by Rule 1.4.
202 Unless review is sought, however, division (b)(6) permits the lawyer to comply with the court's
203 order.

204
205 ~~[14]~~ [16] Division (b) permits disclosure only to the extent the lawyer reasonably
206 believes the disclosure is necessary to accomplish one of the purposes specified. Where
207 practicable, the lawyer should first seek to persuade the client to take suitable action to obviate
208 the need for disclosure. A disclosure adverse to the client's interest should be no greater than the
209 lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made
210 in connection with a judicial proceeding, the disclosure should be made in a manner that limits
211 access to the information to the tribunal or other persons having a need to know it and
212 appropriate protective orders or other arrangements should be sought by the lawyer to the fullest
213 extent practicable. Before making a disclosure under division (b)(1), (2), or (3), a lawyer for an
214 organization should ordinarily bring the issue of taking suitable action to higher authority within
215 the organization, including, if warranted by the circumstances, to the highest authority that can
216 act on behalf of the organization as determined by applicable law.

217
218 ~~[15]~~ [17] Division (b) permits but does not require the disclosure of information relating
219 to a client's representation to accomplish the purposes specified in divisions (b)(1) through
220 (b)(6). In exercising the discretion conferred by this rule, the lawyer may consider such factors
221 as the nature of the lawyer's relationship with the client and with those who might be injured by
222 the client, the lawyer's own involvement in the transaction, and factors that may extenuate the
223 conduct in question. A lawyer's decision not to disclose as permitted by division (b) does not
224 violate this rule. Disclosure may be required, however, by other rules. Some rules require
225 disclosure only if such disclosure would be permitted by division (b). See Rules 4.1(b), 8.1 and
226 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of
227 whether such disclosure is permitted by this rule.

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229

230 **Acting Competently to Preserve Confidentiality**

231

232 ~~[16]~~ [18] A Division (c) requires a lawyer ~~must~~ to act competently to safeguard
233 information relating to the representation of a client against unauthorized access by third parties
234 and against inadvertent or unauthorized disclosure by the lawyer or other persons who are
235 participating in the representation of the client or who are subject to the lawyer’s supervision.
236 See Rules 1.1, 5.1, and 5.3. The unauthorized access to or the inadvertent or unauthorized
237 disclosure of information related to the representation of a client does not constitute a violation
238 of division (c) if the lawyer has made reasonable efforts to prevent the access or disclosure.
239 Factors to be considered in determining the reasonableness of the lawyer’s efforts include, but
240 are not limited to, the sensitivity of the information, the likelihood of disclosure if additional
241 safeguards are not employed, the cost of employing additional safeguards, the difficulty of
242 implementing the safeguards, and the extent to which the safeguards adversely affect the
243 lawyer’s ability to represent clients (e.g., by make a device or important piece of software
244 excessively difficult to use). A client may require the lawyer to implement special security
245 measures not required by this rule or may give informed consent to forego security measures that
246 would otherwise be required by this rule. Whether a lawyer may be required to take additional
247 steps to safeguard a client’s information in order to comply with other law, such as state or
248 federal laws that govern data privacy or that impose specific notification requirements upon the
249 loss of or unauthorized access to electronic information is beyond the scope of these rules. For a
250 lawyer’s duties when sharing information with nonlawyers outside the lawyer’s own firm see
251 Rule 5.3, Comments [3] and [4].

252

253 ~~[17]~~ [19] When transmitting a communication that includes information relating to the
254 representation of a client, the lawyer must take reasonable precautions to prevent the information
255 from coming into the hands of unintended recipients. This duty, however, does not require that
256 the lawyer use special security measures if the method of communication affords a reasonable
257 expectation of privacy. Special circumstances, however, may warrant special precautions.
258 Factors to be considered in determining the reasonableness of the lawyer’s expectation of
259 confidentiality include the sensitivity of the information and the extent to which the privacy of
260 the communication is protected by law or by a confidentiality agreement. A client may require
261 the lawyer to implement special security measures not required by this rule or may give informed
262 consent to the use of a means of communication that would otherwise be prohibited by this rule.
263 Whether a lawyer may be required to take additional steps in order to comply with other law,
264 such as state and federal laws governing data privacy, is beyond the scope of these rules.

265

266 **Former Client**

267

268 ~~[18]~~ [20] The duty of confidentiality continues after the client-lawyer relationship has
269 terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such
270 information to the disadvantage of the former client.

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

279 * * *

281 **Comment**

282 [1] This rule generally parallels Rule 1.11. The term “personally and substantially” signifies
283 that a judge who was a member of a multimember court, and thereafter left judicial office to practice
284 law, is not prohibited from representing a client in a matter pending in the court, but in which the
285 former judge did not participate. So also the fact that a former judge exercised administrative
286 responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where
287 the judge had previously exercised remote or incidental administrative responsibility that did not
288 affect the merits. Compare the Comment to Rule 1.11. The term “adjudicative officer” includes
289 such officials as judges pro tempore, magistrates, special masters, hearing officers, and other
290 parajudicial officers, and also lawyers who serve as part-time judges. ~~Divisions (B) and (C) of the~~
291 ~~Compliance provisions~~ Part III of the Application section of the Ohio Code of Judicial Conduct
292 provide that a parttime judge ~~or judge pro tempore~~ shall not “act as a lawyer in any proceeding in
293 which ~~he or she has~~ the judge served as a judge or in any other related proceeding.” Although
294 phrased differently from this rule, ~~those rules~~ the provisions correspond in meaning.
295
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297 * * *

298 **RULE 1.17: SALE OF LAW PRACTICE**

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300 (h) The *written* notice to clients required by division (e) and (f) of this rule shall
301 be provided by ~~certified mail, return receipt requested~~ regular mail with a certificate of
302 mailing or other comparable proof of mailing. In lieu of providing notice by ~~certified~~ mail,
303 either the selling lawyer or purchasing lawyer, or both, may personally deliver the notice
304 to a client. In the case of personal delivery, the lawyer providing the notice shall obtain
305 *written* acknowledgement of the delivery from the client.
306
307

308 (i) Neither the selling lawyer nor the purchasing lawyer shall attempt to
309 exonerate the lawyer or *law firm* from or limit liability to the former or prospective client
310 for any malpractice or other professional negligence. The provisions of Rule 1.8(h) shall
311 be incorporated in all agreements for the sale or purchase of a law practice. The selling
312 lawyer or the purchasing lawyer, or both, may agree to provide for the indemnification or
313 other contribution arising from any claim or action in malpractice or other professional
314 negligence.
315
316
317

318 **Comment**

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324 **Client Confidences, Consent, and Notice**
325

326 [7] Negotiations between seller and prospective purchaser prior to disclosure of
327 information relating to a specific representation of an identifiable client no more violate the
328 confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible
329 association of another lawyer or mergers between firms, with respect to which client consent is
330 not required. ~~However, providing~~ See Rule 1.6(b)(7). ~~Providing~~ the purchaser access to ~~client-~~
331 ~~specific~~ detailed information relating to the representation and to ~~the file~~ client files requires the
332 purchaser and seller to take steps to ensure confidentiality of information related to the
333 representation. The rule provides that before such information can be disclosed by the seller to
334 the purchaser, the purchaser and seller must enter into a confidentiality agreement that binds the
335 purchaser to preserve information related to the representation in a manner consistent with Rule
336 1.6. This agreement binds the purchaser as if the seller's clients were clients of the purchaser
337 and regardless of whether the sale is eventually consummated by the parties. After the
338 confidentiality agreement has been signed and before the prospective purchaser reviews client-
339 specific information, a conflict check should be completed to assure that the prospective
340 purchaser does not review client-specific information concerning a client whom the prospective
341 purchaser cannot represent because of a conflict of interest.
342

343 * * *

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345 **RULE 1.18: DUTIES TO PROSPECTIVE CLIENT**
346

347 (a) A person who ~~discusses~~ consults with a lawyer about the possibility of
348 forming a client-lawyer relationship with respect to a matter is a prospective client.
349

350 (b) Even when no client-lawyer relationship ensues, a lawyer who has ~~had~~
351 ~~discussions with~~ learned information from a prospective client shall not use or reveal
352 that information ~~learned in the consultation~~, except as Rule 1.9 would permit with
353 respect to information of a former client.
354

355 * * *

356
357 **Comment**
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359
360 [1] Prospective clients, like clients, may disclose information to a lawyer, place
361 documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's
362 ~~discussions~~ consultations with a prospective client usually are limited in time and depth and
363 leave both the prospective client and the lawyer free (and sometimes required) to proceed no
364 further. Hence, prospective clients should receive some but not all of the protection afforded
365 clients.
366

367 [2] ~~Not all persons who communicate information to a lawyer are entitled to~~
368 ~~protection under this rule.~~ A person becomes a prospective client
369 by consulting with a lawyer about the possibility of forming a client-lawyer relationship with

370 respect to a matter. Whether communications, including written, oral, or electronic
371 communications, constitute a consultation depends on the circumstances. For example, a
372 consultation is likely to have occurred if a lawyer, either in person or through the lawyer’s
373 advertising in any medium, specifically requests or invites the submission of information about a
374 potential representation without clear and reasonably understandable warnings and cautionary
375 statements that limit the lawyer’s obligations, and a person provides information in response.
376 See also Comment [4]. In contrast, a consultation does not occur if a person provides
377 information to a lawyer in response to advertising that merely describes the lawyer’s education,
378 experience, areas of practice and contact information, or provide legal information of general
379 interest. Such a person communicates information unilaterally to a lawyer, without any
380 reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-
381 lawyer relationship, and thus is not a “prospective client,” within the meaning of division (a).

382 * * *

385 IV. TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

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389 RULE 4.4: RESPECT FOR RIGHTS OF THIRD PERSONS

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

395 (b) A lawyer who receives a document or electronically stored information
396 relating to the representation of the lawyer’s client and *knows or reasonably should*
397 *know* that the document or electronically stored information was inadvertently sent shall
398 promptly notify the sender.

400 Comment

401 * * *

404 [2] Division (b) recognizes that lawyers sometimes receive ~~documents~~ a document or
405 electronically stored information that ~~were~~ *was* mistakenly sent or produced by opposing parties
406 or their lawyers. A document or electronically stored information is inadvertently sent when it
407 is accidentally transmitted, such as when an email or letter is misaddressed or a document or
408 electronically stored information is accidentally included with information that was intentionally
409 transmitted. If a lawyer knows or reasonably should know that such a document or electronically
410 stored information was sent inadvertently, then this rule requires the lawyer to promptly notify
411 the sender. For purposes of this rule, “document or electronically stored information” includes
412 paper and electronic documents, e-mail or and other electronic modes of transmission forms of
413 electronically stored information, including embedded data (commonly referred to as
414 “metadata”), that is subject to being read or put into readable form. Metadata in electronic

415 documents creates an obligation under this rule only if the receiving lawyer knows or reasonably
416 should know that the metadata was sent inadvertently to the receiving lawyer.

417
418 [3] Some lawyers may choose to return a document or delete electronically stored
419 information unread, for example, when the lawyer learns before receiving ~~the document~~ it that it
420 was sent inadvertently ~~to the wrong address~~. Where a lawyer is not required by applicable law to
421 do so, the decision to voluntarily return such a document or delete electronically stored
422 information is a matter of professional judgment ordinarily reserved to the lawyer, subject to
423 applicable law that may govern deletion. See Rules 1.2 and 1.4.

424
425 * * *

426 427 **V. LAW FIRMS AND ASSOCIATIONS**

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429 * * *

430 431 **RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS**

432
433 [No change to the black-letter rule]

434 435 **Comment**

436
437 [1] ~~Lawyers generally employ assistants in their practice, including secretaries,~~
438 ~~investigators, law student interns, and paraprofessionals. Such assistants, whether employees or~~
439 ~~independent contractors, act for the lawyer in rendition of the lawyer's professional services. A~~
440 ~~lawyer must give such assistants appropriate instruction and supervision concerning the ethical~~
441 ~~aspects of their employment, particularly regarding the obligation not to disclose information~~
442 ~~relating to representation of the client, and should be responsible for their work product. The~~
443 ~~measures employed in supervising nonlawyers should take account of the fact that they do not~~
444 ~~have legal training and are not subject to professional discipline.~~

445
446 [2] Division (a) requires lawyers with managerial authority within a law firm or
447 government agency to make reasonable efforts to ~~establish internal policies and procedures~~
448 ~~designed to provide~~ ensure that the firm has in effect measures giving reasonable assurance that
449 nonlawyers in the firm or government agency, and nonlawyers outside the firm or agency who
450 work on firm or agency matters, will act in a way compatible with the Ohio Rules of Professional
451 Conduct the professional obligations of the lawyer. See Rule 1.1, Comment [6]. Division (b)
452 applies to lawyers who have supervisory authority ~~over the work of a nonlawyer~~. Division (c)
453 specifies the circumstances in which a lawyer is responsible for the conduct of a nonlawyer,
454 within or outside the firm or government agency, that would be a violation of the Ohio Rules of
455 Professional Conduct if engaged in by a lawyer.

456 457 **Nonlawyers within the Firm or Agency**

458
459 [2] Lawyers generally employ assistants in their practice, including secretaries,
460 investigators, law student interns, and paraprofessionals. Such assistants, whether employees or

461 independent contractors, act for the lawyer in rendition of the lawyer’s professional services. A
462 lawyer must give such assistants appropriate instruction and supervision concerning the ethical
463 aspects of their employment, particularly regarding the obligation not to disclose information
464 relating to representation of the client, and should be responsible for their work product. The
465 measures employed in supervising nonlawyers should take account of the fact that they do not
466 have legal training and are not subject to professional discipline.

467
468 **Nonlawyers Outside the Firm or Agency**

469
470 [3] A lawyer may use nonlawyers outside the firm or government agency to assist the
471 lawyer in rendering legal services to the client. Examples include the retention of an
472 investigative or paraprofessional service, hiring a document management company to create and
473 maintain a database for complex litigation, sending client documents to a third party for printing
474 or scanning, or using an Internet-based service to store client information. When using such
475 services outside the firm or agency, the lawyer must make reasonable efforts to ensure that the
476 services are provided in a manner compatible with the lawyer’s professional obligations. The
477 extent of the obligation to make reasonable efforts will depend on the circumstances, including
478 the education, experience, and reputation of the nonlawyer; the nature of the services involved;
479 the terms of any arrangements concerning the protection of client information; and the legal and
480 ethical environments of the jurisdictions in which the services will be performed, particularly
481 with regard to confidentiality. See also Rules 1.1, 1.2, 1.4, 1.6, 5.4(a), and 5.5(a). When
482 retaining or directing a nonlawyer outside the firm or agency, a lawyer should communicate
483 directions appropriate under the circumstances to give reasonable assurance that the nonlawyer’s
484 conduct is compatible with the professional obligations of the lawyer.

485
486 [4] When the client directs the selection of a particular nonlawyer service provider
487 outside the firm or agency, the lawyer ordinarily should agree with the client concerning the
488 allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2.
489 When making an allocation in a matter pending before a tribunal, lawyers and parties may have
490 additional obligations that are a matter of law beyond the scope of these rules.

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494 **RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL**
495 **PRACTICE OF LAW**

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497 * * *

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499
500 (d) A lawyer admitted and in good standing in another United States
501 jurisdiction may provide legal services in this jurisdiction through an office or other
502 systematic and continuous presence in either of the following circumstances:

503
504 (1) the lawyer is registered in compliance with Gov. Bar R. VI, Section
505 3 and is providing services to the employer or its organizational affiliates for
506 which the permission of a *tribunal* to appear *pro hac vice* is not required;

507
508 (2) the lawyer is providing services that the lawyer is authorized to
509 provide by federal or Ohio law.

510 **Comment**

511
512
513 [1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized
514 to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may
515 be authorized by court rule or order or by law to practice for a limited purpose or on a restricted
516 basis. Division (a) applies to unauthorized practice of law by a lawyer, whether through the
517 lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not
518 assist a person in practicing law in violation of the rules governing professional conduct in that
519 person's jurisdiction.

520
521 * * *

522
523 [4] Other than as authorized by law or this rule, a lawyer who is not admitted to
524 practice generally in this jurisdiction violates division (b)(1) if the lawyer establishes an office or
525 other systematic and continuous presence in this jurisdiction for the practice of law. Presence
526 may be systematic and continuous even if the lawyer is not physically present here. For
527 example, advertising in media specifically targeted to Ohio residents or initiating contact with
528 Ohio residents for solicitation purposes could be viewed as a systematic and continuous
529 presence. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is
530 admitted to practice law in this jurisdiction. See also Rules 7.1 and 7.5(b).

531
532 * * *

533
534 [21] Divisions (c) and (d) do not authorize communications advertising legal services
535 ~~to prospective clients in this jurisdiction~~ Ohio by lawyers who are admitted to practice in other
536 jurisdictions. Whether and how lawyers may communicate the availability of their services ~~to~~
537 ~~prospective clients in this jurisdiction~~ Ohio is governed by Rules 7.1 to 7.5.

538
539 * * *

542 **VII. INFORMATION ABOUT LEGAL SERVICES**

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545 **RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES**

546 [No change to the black-letter rule]

547
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549 **Comment**

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553 [3] An advertisement that truthfully reports a lawyer's achievements on behalf of
554 clients or former clients may be misleading if presented so as to lead a reasonable person to form
555 an unjustified expectation that the same results could be obtained for other clients in similar
556 matters without reference to the specific factual and legal circumstances of each client's case.
557 Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or
558 fees of other lawyers may be misleading if presented with such specificity as would lead a
559 reasonable person to conclude that the comparison can be substantiated. The inclusion of an
560 appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to
561 create unjustified expectations or otherwise mislead ~~a prospective client~~ the public.

562 * * *

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564
565 **RULE 7.2: ADVERTISING AND RECOMMENDATION OF PROFESSIONAL**
566 **EMPLOYMENT**

567 [No change to the black-letter rule]

568
569
570 **Comment**

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572 [1] To assist the public in learning about and obtaining legal services, lawyers should
573 be allowed to make known their services not only through reputation but also through organized
574 information campaigns in the form of advertising. Advertising involves an active quest for
575 clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's
576 need to know about legal services can be fulfilled in part through advertising. This need is
577 particularly acute in the case of persons of moderate means who have not made extensive use of
578 legal services. The interest in expanding public information about legal services ought to prevail
579 over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices
580 that are misleading or overreaching.

581
582 [2] This rule permits public dissemination of information concerning a lawyer's name
583 or firm name, address, email address, website, and telephone number; the kinds of services the
584 lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for
585 specific services and payment and credit arrangements; a lawyer's foreign language ability;
586 names of references and, with their consent, names of clients regularly represented; and other
587 information that might invite the attention of those seeking legal assistance.

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[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, ~~against~~ advertising going beyond specified facts about a lawyer, or ~~against~~ “undignified” advertising. ~~Television is now one of, the Internet, and other forms of electronic communication are among~~ the most powerful media for getting information to the public, particularly persons of low and moderate income; ~~prohibiting. Prohibiting television, Internet, or other forms of electronic advertising, therefore,~~ would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. ~~Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this rule.~~ But see Rule 7.3(a) for the prohibition against ~~the solicitation of a prospective client~~ through a real-time electronic exchange ~~that is not~~ initiated by the ~~prospective client~~ lawyer.

[4] Neither this rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Except as provided by these rules, lawyers are not permitted to give anything of value to another for recommending the lawyer’s services or channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities. A reciprocal referral agreement between lawyers, or between a lawyer and a nonlawyer, is prohibited. *Cf.* Rule 1.5.

[5A] Division (b)(1) allows a lawyer to pay for advertising and communications permitted by this rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, ~~banner ads~~ Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, including Internet-based client leads, provided the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5 and 5.4, and the lead generator’s communications are consistent with Rule 7.1. To comply with Rule 7.1, a lawyer shall not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person’s legal problems when determining which lawyer should receive the referral. See Rule Rules 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them and 8.4(a).

[6] A lawyer may pay the usual charges of a legal service plan or a nonprofit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or

634 a similar delivery system that assists ~~prospective clients~~ people who seek to secure legal
635 representation. A lawyer referral service, on the other hand, is any organization that holds itself
636 out to the public as a lawyer referral service. Such referral services are understood by ~~laypersons~~
637 the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with
638 appropriate experience in the subject matter of the representation and afford other client
639 protections, such as complaint procedures or malpractice insurance requirements. Consequently,
640 this rule only permits a lawyer to pay the usual charges of a nonprofit or qualified lawyer referral
641 service. A qualified lawyer referral service is one that is approved pursuant to Rule XVI of the
642 Supreme Court Rules for the Government of the Bar of Ohio. Relative to fee sharing, see Rule
643 5.4(a)(5).

644
645 [7] A lawyer who accepts assignments or referrals from a legal service plan or
646 referrals from a lawyer referral service must act reasonably to assure that the activities of the
647 plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal
648 service plans and lawyer referral services may communicate with ~~prospective clients~~ the public,
649 but such communication must be in conformity with these rules. Thus, advertising must not be
650 false or misleading, as would be the case if the communications of a group advertising program
651 or a group legal services plan would mislead ~~prospective clients~~ the public to think that it was a
652 lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer
653 allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

654
655 [8] [RESERVED]

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657 * * *

658
659 **RULE 7.3: DIRECT CONTACT WITH PROSPECTIVE SOLICITATION OF CLIENTS**

660
661 (a) A lawyer shall not by in-person, live telephone, or real-time electronic
662 contact solicit professional employment ~~from a prospective client~~ when a significant
663 motive for the lawyer's doing so is the lawyer's pecuniary gain, unless either of the
664 following applies:

- 665
666 (1) the person contacted is a lawyer;
667
668 (2) the person contacted has a family, close personal, or prior
669 professional relationship with the lawyer.

670
671 (b) A lawyer shall not solicit professional employment ~~from a prospective~~
672 ~~client~~ by *written*, recorded, or electronic communication or by in-person, telephone, or
673 real-time electronic contact even when not otherwise prohibited by division (a), if either
674 of the following applies:

- 675
676 (1) the ~~prospective client~~ person being solicited has made *known* to the
677 lawyer a desire not to be solicited by the lawyer;
678
679 (2) the solicitation involves coercion, duress, or harassment;

- 726 report, learn the identity of any witnesses, and obtain photographs of the scene,
727 vehicles, and any visible injuries. Keep copies of receipts of all your expenses
728 and medical care related to the incident.
729
- 730 2. You do not have to sign anything - You may not want to give an interview or
731 recorded statement without first consulting with an attorney, because the
732 statement can be used against you. If you may be at fault or have been charged
733 with a traffic or other offense, it may be advisable to consult an attorney right
734 away. However, if you have insurance, your insurance policy probably requires
735 you to cooperate with your insurance company and to provide a statement to the
736 company. If you fail to cooperate with your insurance company, it may void your
737 coverage.
738
 - 739 3. Your interests versus interests of insurance company - Your interests and those
740 of the other person's insurance company are in conflict. Your interests may also
741 be in conflict with your own insurance company. Even if you are not sure who is
742 at fault, you should contact your own insurance company and advise the
743 company of the incident to protect your insurance coverage.
744
 - 745 4. There is a time limit to file an insurance claim - Legal rights, including filing a
746 lawsuit, are subject to time limits. You should ask what time limits apply to your
747 claim. You may need to act immediately to protect your rights.
748
 - 749 5. Get it in *writing* - You may want to request that any offer of settlement from
750 anyone be put in *writing*, including a *written* explanation of the type of damages
751 which they are willing to cover.
752
 - 753 6. Legal assistance may be appropriate - You may consult with an attorney before
754 you sign any document or release of claims. A release may cut off all future
755 rights against others, obligate you to repay past medical bills or disability
756 benefits, or jeopardize future benefits. If your interests conflict with your own
757 insurance company, you always have the right to discuss the matter with an
758 attorney of your choice, which may be at your own expense.
759
 - 760 7. How to find an attorney - If you need professional advice about a legal problem
761 but do not know an attorney, you may wish to check with relatives, friends,
762 neighbors, your employer, or co-workers who may be able to recommend an
763 attorney. Your local bar association may have a lawyer referral service that can
764 be found in the Yellow Pages or on the Internet.
765
 - 766 8. Check a lawyer's qualifications - Before hiring any lawyer, you have the right to
767 know the lawyer's background, training, and experience in dealing with cases
768 similar to yours.
769
 - 770 9. How much will it cost? - In deciding whether to hire a particular lawyer, you
771 should discuss, and the lawyer's written fee agreement should reflect:

772
773 a. How is the lawyer to be paid? If you already have a settlement
774 offer, how will that affect a contingent fee arrangement?
775

776 b. How are the expenses involved in your case, such as telephone
777 calls, deposition costs, and fees for expert witnesses, to be paid? Will these
778 costs be advanced by the lawyer or charged to you as they are incurred? Since
779 you are obligated to pay all expenses even if you lose your case, how will
780 payment be arranged?
781

782 c. Who will handle your case? If the case goes to trial, who will be the
783 trial attorney?
784

785 This information is not intended as a complete description of your legal rights, but
786 as a checklist of some of the important issues you should consider.
787

788 ***THE SUPREME COURT OF OHIO, WHICH GOVERNS THE CONDUCT OF**
789 **LAWYERS IN THE STATE OF OHIO, NEITHER PROMOTES NOR PROHIBITS THE**
790 **DIRECT SOLICITATION OF PERSONAL INJURY VICTIMS. THE COURT DOES**
791 **REQUIRE THAT, IF SUCH A SOLICITATION IS MADE, IT MUST INCLUDE THE**
792 **ABOVE DISCLOSURE.**
793

794 (f) Notwithstanding the prohibitions in division (a) of this rule, a lawyer may
795 participate with a prepaid or group legal service plan operated by an organization not
796 owned or directed by the lawyer that uses in-person or telephone contact to solicit
797 memberships or subscriptions for the plan from persons who are not *known* to need
798 legal services in a particular matter covered by the plan.
799

800 Comment

801

802 [1] A solicitation is a communication initiated by the lawyer that is directed to a
803 specific person and that offers to provide, or can reasonably be understood as offering to provide,
804 legal services. In contrast, a lawyer's communication typically does not constitute a solicitation
805 if it is (a) directed to the general public, such as through a billboard, an Internet-based
806 advertisement, a web site, or a commercial, (b) in response to a request for information, or (c)
807 automatically generated in response to Internet searches.
808

809 [2] There is a potential for abuse ~~inherent in~~ when a solicitation involves direct in-
810 person, live telephone, or real-time electronic contact by a lawyer with a ~~prospective client~~
811 someone known to need legal services. These forms of contact ~~between a lawyer and a~~
812 ~~prospective client~~ subject the layperson person to the private importuning of the trained advocate
813 in a direct interpersonal encounter. The ~~prospective client~~ person, who may already feel
814 overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult
815 fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in
816 the face of the lawyer's presence and insistence upon being retained immediately. The situation
817 is fraught with the possibility of undue influence, intimidation, and over-reaching.

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~~{2}~~ [3] This potential for abuse inherent in direct in-person, live telephone, or real-time electronic solicitation of ~~prospective clients~~ justifies its prohibition, particularly since ~~lawyer advertising and written and recorded communication permitted under Rule 7.2 offer~~ a lawyer has alternative means of conveying necessary information to those who may be in need of legal services. ~~Advertising and written and recorded communications that may~~ Communications can be mailed or autodialed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communication make it possible for a ~~prospective client~~ the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the ~~prospective client~~ public to direct in-person, telephone, or real-time electronic persuasion that may overwhelm the ~~prospective client's~~ person's judgment. In using any telephone or other electronic communication, a lawyer remains subject to all applicable ~~requirements of the "Do Not Call" provisions of~~ state and federal telemarketing sales laws and regulations.

~~{3}~~ [4] The use of general advertising and written, recorded, or electronic communications to transmit information from lawyer to ~~prospective client~~ the public, rather than direct in-person, live telephone, or real-time electronic contact, will help to ensure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone, or real-time electronic ~~conversations between a lawyer and a prospective client~~ contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach, and occasionally cross, the dividing line between accurate representations and those that are false and misleading.

~~{4}~~ [5] There is far less likelihood that a lawyer would engage in abusive practices against ~~an individual who is~~ a former client, ~~or~~ a person with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, division (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to ~~its~~ members or beneficiaries.

~~{5}~~ [6] ~~But even~~ Even permitted forms of solicitation can be abused. Thus, any solicitation that contains information that is false or misleading within the meaning of Rule 7.1, that involves coercion, duress, or harassment within the meaning of Rule 7.3(b)(2), or that involves contact with a ~~prospective client~~ someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication ~~to a prospective client~~ as permitted by Rule 7.2 the

864 lawyer receives no response, any further effort to communicate with the ~~prospective client~~
865 recipient may violate ~~the provisions of~~ Rule 7.3(b).

866
867 ~~[6]~~ [7] This rule is not intended to prohibit a lawyer from contacting representatives of
868 organizations or groups that may be interested in establishing a group or prepaid legal plan for
869 their members, insureds, beneficiaries, or other third parties for the purpose of informing such
870 entities of the availability of and details concerning the plan or arrangement that the lawyer or
871 lawyer's firm is willing to offer. This form of communication is not directed to ~~a prospective~~
872 client ~~people who are seeking legal services for themselves~~. Rather, it is usually addressed to an
873 individual acting in a fiduciary capacity seeking a supplier of legal services for others who may,
874 if they choose, become prospective clients of the lawyer. Under these circumstances, the activity
875 that the lawyer undertakes in communicating with such representatives and the type of
876 information transmitted to the individual are functionally similar to and serve the same purpose
877 as advertising permitted under Rule 7.2.

878
879 ~~[7]~~ [8] None of the requirements of Rule 7.3 applies to communications sent in response
880 to requests from clients or ~~prospective clients~~ others. General announcements by lawyers,
881 including changes in personnel or office location, do not constitute communications soliciting
882 professional employment from a ~~client~~ person known to be in need of legal services within the
883 meaning of this rule.

884
885 ~~[7A]~~ [8A] The use of written, recorded, and electronic communications to solicit
886 ~~prospective clients~~ persons who have suffered personal injuries or the loss of a loved one can
887 potentially be offensive. Nonetheless, it is recognized that such communications assist potential
888 clients in not only making a meaningful determination about representation, but also can aid
889 potential clients in recognizing issues that may be foreign to them. Accordingly, the information
890 contained in division (e) must be communicated ~~to the prospective client or a relative of a~~
891 ~~prospective client~~ when the solicitation occurs within thirty days of an accident or disaster that
892 gives rise to a potential claim for personal injury or wrongful death.

893
894 ~~[8]~~ [9] Division (f) of this rule permits a lawyer to participate with an organization that
895 uses personal contact to solicit members for its group or prepaid legal service plan, provided that
896 the personal contact is not undertaken by any lawyer who would be a provider of legal services
897 through the plan. The organization must not be owned or directed, whether as manager or
898 otherwise, by any lawyer or law firm that participates in the plan. For example, division (f)
899 would not permit a lawyer to create an organization controlled directly or indirectly by the
900 lawyer and use the organization for the in-person or telephone solicitation of legal employment
901 of the lawyer through memberships in the plan or otherwise. The communication permitted by
902 these organizations also must not be directed to a person known to need legal services in a
903 particular matter, but is to be designed to inform potential plan members generally of another
904 means of affordable legal services. Lawyers who participate in a legal service plan must
905 reasonably ensure that the plan sponsors are in compliance with Rules 7.1, 7.2, and 7.3(b). See
906 Rule 8.4(a).

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908 * * *
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910 **VIII. MAINTAINING THE INTEGRITY OF THE PROFESSION**

911 * * *

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914 **RULE 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW**

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916
917 [No amendments to the black-letter rule]

918
919 **Comment**

920 * * *

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922
923 [5] When a lawyer’s conduct involves significant contacts with more than one
924 jurisdiction, it may not be clear whether the predominant effect of the lawyer’s conduct will
925 occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer’s
926 conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the
927 predominant effect will occur, the lawyer shall not be subject to discipline under this rule. With
928 respect to conflicts of interest and determining a lawyer’s reasonable belief pursuant to division
929 (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular
930 jurisdiction as within the scope of that division may be considered if the agreement was obtained
931 with the client’s informed consent, confirmed in the agreement.

932 * * *

**PROPOSED AMENDMENTS TO THE
SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO**

* * *

1 **RULE III. LEGAL PROFESSIONAL ASSOCIATIONS AUTHORIZED TO PRACTICE**
2 **LAW**

* * *

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6 **Section 4. Financial Responsibility**

7
8 (A) A legal professional association, corporation, legal clinic, limited liability
9 company, or limited liability partnership shall maintain adequate professional liability insurance
10 or other form of adequate financial responsibility for any liability of the firm arising from acts or
11 omissions in the rendering of legal services by an officer, director, agent, employee, manager,
12 member, partner, or equity holder.

13
14 (1) “Adequate professional liability insurance” means one or more policies of
15 attorneys’ professional liability insurance that insure the legal professional association,
16 corporation, legal clinic, limited liability company, or limited liability partnership both:

17
18 (a) In an amount for each claim, in excess of any deductible, of at least ~~fifty~~ one
19 hundred thousand dollars multiplied by the number of attorneys practicing with the firm; and

20
21 (b) An amount of ~~one~~ three hundred thousand dollars for all claims during the policy
22 year, multiplied by the number of attorneys practicing with the firm. No firm shall be required to
23 carry insurance of more than five million dollars per claim, in excess of any deductible, or more
24 than ten million dollars for all claims during the policy year, in excess of any deductible.

25
26 (2) “Other form of adequate financial responsibility” means funds, in an amount not
27 less than the amount of professional liability insurance applicable to a firm under Section 4(A)(1)
28 of this rule for all claims during the policy year, available to satisfy any liability of the firm
29 arising from acts or omissions in the rendering of legal services by an officer, director, agent,
30 employee, manager, member, partner, or equity holder. The funds shall be available in the form
31 of a deposit in trust of cash, bank certificate of deposit, or United States Treasury obligation, a
32 bank letter of credit, or a surety bond.

33
34 (B) Each member, partner, or other equity holder of a legal professional association,
35 corporation, legal clinic, limited liability company, or limited liability partnership shall be jointly
36 and severally liable for any liability of the firm based upon a claim arising from acts or
37 omissions in the rendering of legal services while he or she was a member, partner, or equity
38 holder, in an amount not to exceed the aggregate of both of the following:
39

