

Avoiding Foreclosure:

*Helping Families Keep
Their Homes*

Pennsylvania Legal Aid Network
Pennsylvania Housing Finance Agency

PENNSYLVANIA BAR INSTITUTE
Continuing Education Arm of the Pennsylvania Bar Association
 **BRINGING EXCELLENCE TO CLE**

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Welcome

To

The Pennsylvania Legal Aid Network, Inc. Training

**Avoiding Foreclosure: Helping Families
Keep Their Homes**

**Supported by
Pennsylvania Housing Finance Agency
And
Neighborworks of America**

In Partnership and Collaboration with

**Pennsylvania Bar Association and
Pennsylvania Bar Institute**



211 North Front Street
 Harrisburg, PA 17101
 717-780-3800 www.phfa.org



118 Locust Street
 Harrisburg, PA 17101
 717-236-9486 www.palegalaid.net

The Pennsylvania Housing Finance Agency ("PHFA") and the Pennsylvania Legal Aid Network ("PLAN") are delighted to be working in partnership to provide help for Pennsylvania families facing foreclosure. PHFA and PLAN are enormously grateful to the Pennsylvania Bar Institute for their generous support of this program through their facilities and technology.

Funding for this initiative is being provided, in large part, through a grant from NeighborWorks America. PHFA has a network of 47 counseling agencies that provide foreclosure mitigation assistance, consumer credit counseling and financial service counseling throughout the Commonwealth. PHFA has received funding through competitive grant applications with Neighborworks America for this established counseling network. PLAN has 16 legal aid programs, providing vital legal services to eligible clients who have nowhere else to turn.

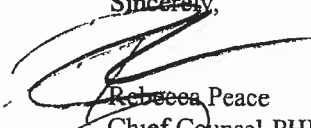
At the end of 2008, this competitive grant program was expanded PHFA and PLAN successfully applied for grant funding to allow the counseling agencies to reach out to PLAN, including their pro bono lawyers, for expert assistance and specialized help for homeowners when they encounter legal problems beyond the scope of the usual counseling network. This partnership between PLAN and PHFA will allow the housing counseling system to tap into a skilled and motivated group of specialists to help quickly mitigate foreclosure among homeowners.

Time is of the essence. An economic crisis appears before us as job losses mount, the economy continues to falter, and the number of families with unaffordable mortgages or facing accelerated payments due to adjustable rate mortgage resets grows. Too often, the servicing, title or other credit issues facing these families mire down the resolution process and time passes, adding to the interest costs and delinquencies. We are hopeful that providing legal assistance quickly can help cut into these time delays and can help to keep families in their homes.

Again, thanks to the Pennsylvania Bar Institute for their generous support and assistance. And thanks to all of you for attending this CLE. We hope this will be a memorable and informative day and that you will offer your professional time and support to help families facing challenges with their mortgages.

Information about mortgage assistance and financing programs, the counseling efforts and the NeighborWorks America program will continue to be updated and available on PHFA's website at www.phfa.org. You can also access information about PLAN at www.palegalaid.net, or visit our consumer information site at www.palawhelp.org. Please keep in touch!


Sincerely,


 Rebecca Peace
 Chief Counsel-PHFA


 John Goryl
 Associate Counsel-PHFA


 Samara Gomez
 Assistant Counsel-PHFA

Sincerely,


 Samuel W. Milkes
 Executive Director, PLAN, Inc.

Biographies

Course Planners and Faculty

Patrick M. Cicero is the managing attorney at MidPenn Legal Services' York Office and head of MidPenn's Consumer Unit. Patrick's case load is concentrated primarily on consumer and housing law with an emphasis on anti-predatory lending work, debt collection defense and bankruptcy. Prior to joining MidPenn, Patrick served for two years as a judicial law clerk to the Honorable Sylvia H. Rambo, United States District Court Judge for the Middle District of Pennsylvania.

Samara Gomez is Assistant Counsel for the Pennsylvania Housing Finance Agency. Samara is a recent graduate of Howard University and the Dickinson School of Law of the Pennsylvania State University. During law school, she served as an intern at the Family Law Clinic, Pennsylvania Attorney General's Office in the Capital Litigation Appeals Division, Laurel Legal Services and the Sacramento County District Attorney's Office. Samara is dedicated to community service programs which are focused on improving the lives of women.

Beth Goodell is a senior attorney with Community Legal Services (CLS) of Philadelphia, where she specializes in bankruptcy and homeownership defense, representing low income homeowners victimized by predatory lending or otherwise facing foreclosure. Ms. Goodell is a 1997 cum laude graduate of the University of Pennsylvania Law School and a board member of Rebuilding Together Philadelphia, a non-profit volunteer program providing free repairs for low-income home owners.

John F. Goryl is Associate Counsel with the Pennsylvania Housing Finance Agency. He has been with the Agency since 1988. John is primarily responsible for providing legal advice and expertise in regard to the Agency's Single Family Programs and Special Needs Initiatives and the Homeowner's Emergency Mortgage Assistance Program. Prior to his employment with the Agency, John worked with the Senate of Pennsylvania as Counsel to the Urban Affairs and Housing Committee and the Community and Economic Development Committee. He also maintained a private law practice in Carlisle, PA. John is a 1978 graduate of the Dickinson School of Law. He received his undergraduate degree from Penn State University.

Daniel L. Haller is a staff attorney at Neighborhood Legal Services Association (NLSA) of Pittsburgh, and a member of the Allegheny County Bar Association. Mr. Haller's case load is concentrated primarily in consumer law. He received a B.A. degree from Wheeling Jesuit College, a M.S. degree from the University of Notre Dame and a J.D. degree from the University of Pittsburgh School of Law. Mr. Haller is the former author of "Mortgage Foreclosure" in Pennsylvania Consumer Law, Carolyn Carter, Editor.

Michael McKeever is a graduate of Fairfield University with a B.A. in Politics and a graduate of Villanova University School of Law with a J. D. degree. Mr. McKeever has been practicing law and representing mortgage lenders since 1989. Mr. McKeever became a partner in the Philadelphia based law firm of Goldbeck McCafferty & McKeever in 1995 and became managing partner in 2005. He is licensed to practice law in both Pennsylvania and New Jersey and is a member of all Federal District Courts in both states. He is **AV rated** by Martindale-Hubbell. Mr. McKeever was a founding board member of the National Foreclosure Professionals and served as President from 2001 until its merger with the American Legal and Financial Network ("AFN")

in 2004. He currently serves on the Executive Board. Mr. McKeever is a frequent lecturer on creditor's rights within the industry and has written numerous articles and served on numerous industry panels on issues facing lenders in judicial matters in Pennsylvania. He is actively involved in the creation of Mediation/Conciliation programs in Pennsylvania and New Jersey, protecting the rights of lenders while affording homeowners an opportunity to resolve their delinquent loans.

Michelle Lewis is a forensic real estate expert, fraud examiner, and practicing broker/appraiser with over 29 years of experience. Ms. Lewis founded Northwest Counseling Service (NWCS) and has served as its president and chief executive officer since 1982. She also serves as Chief Executive Officer in a private firm that delivers services to government, attorneys, and other firms by providing expert opinions, fraud examinations, and investigation of questionable practices

Samuel W. Milkes serves as Executive Director of the Pennsylvania Legal Aid Network, Inc. (PLAN, Inc.), overseeing the statewide civil legal aid system. Together, the programs comprising the members of the Pennsylvania Legal Aid Network represent approximately 100,000 clients annually. During his tenure at PLAN, Inc., the program has been successful at playing a major role in the passage of the Access to Justice Act, legislation which provides additional funding for civil legal aid through a filing fee surcharge. Previously, he was a partner in the Carlisle law firm of Jacobsen & Milkes, with a general practice in civil and criminal law. He began his legal career as a staff attorney in legal aid, litigating many individual and impact cases over the years and he then served as Executive Director and Deputy Director of two separate legal aid programs in Pennsylvania. Mr. Milkes is a graduate of Arizona State University and of the Indiana University School of Law, at Bloomington.

David Keller Trevaskis is an attorney and former third grade teacher with a Master's Degree in Education. He is the Pro Bono Coordinator for Legal Services for the Pennsylvania Bar Association (PBA), responsible for assisting local bar associations, legal services programs and other groups who offer pro bono legal services across the Commonwealth. Trevaskis coordinates the PBA's pro bono placement efforts, using the PALawHelp.org and PApobono.net technologies to expand the resources for the neediest among us. Trevaskis is a frequent presenter across Pennsylvania on civil legal aid and pro bono issues and he is recognized as a national expert in public education about the law. He is the recipient of the 1996 Philadelphia Bar Association's Leon J. Obermayer Education Award, a 2000 President's Award from the Pennsylvania Bar Association for the project PEACE anti-violence program he developed, the Philadelphia Bar Association's Young Lawyer Division's 2002 F. Sean Peretta Service Award, and a 2004 Chester County Bar Association President's Award. In 2006, Trevaskis was the second recipient of the 2006 Compass Award, which was first given to United States Supreme Court Justice Sandra Day O'Connor. During that same year, Trevaskis received the President's Citation from the Indiana Bar Association and the LEAP-Kids Lifetime Achievement and Mentor Award. In 2007, Trevaskis received the President's Award from the Delaware County Bar.

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Avoiding Foreclosure: Helping Families Keep Their Homes

March 2, 2009

8:00-8:30 Registration

8:30-9:00

Introductions and Overview

John F. Goryl, Esq., Associate Counsel, PHFA, Samara Gomez, Esq., Assistant Counsel, PHFA, Samuel W. Milkes, Esq., Executive Director, PLAN, Inc.

This session will provide an overview of Neighborworks' funding, programmatic goals, challenges, guidelines and procedural requirements, a summary of legal issues commonly encountered by housing counselors, and strategies/approaches that housing counselors, paralegals and attorneys can take to achieve loan workouts and prevent foreclosure filing.

9:00-10:00

Counselors & Lawyers Coordinating Services

Michelle Lewis, President and Chief Executive Officer, NWCS, Samuel W. Milkes, Esq., Executive Director, PLAN, Inc., David Keller Trevaskis, Esq., Pro Bono Coordinator, PA Bar Association

This session will describe the roles of housing counselors, legal services lawyers, and pro bono lawyers participating in the housing counseling project. Panelists will address the kinds of information and documents legal services staff or pro bono lawyers can expect from housing counselors.

Panelists will address various ethical issues that can arise, when clients are assisted by the joint efforts of housing counselors, legal services lawyers and pro bono lawyers. The session will include materials about the referral systems, including client waivers, and it will include disciplinary rules governing attorney conduct. Some of the specific ethical issues the panel will address include:

- **Conflicts of interest:** How attorneys can look for and resolve potential conflicts of interest, when a housing counselor seeks to refer a case to legal services, but the legal services program already represents an individual whose interests conflict with those of the prospective client.
- **Confidentiality and privilege:** How can information be shared back and forth among counselor, legal services and pro bono lawyer, and how can data be reported to funding sources, allowing for the greatest flow of information among those seeking to help a client, while also adhering to restrictions upon the ability of a lawyer to divulge confidential or privileged information about a client? Are aspects of the sharing of information prohibited by any disciplinary rules?

10:00-10:15

Break

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10:00-10:15

Break

relevant loan documents (note, application, appraisal, TILA). The panel will briefly review the rescission remedy under the Truth in Lending Act.

2:45-3:00

Break

3:00-4:30

Servicing Problems

Patrick Cicero, Esq., Managing Attorney, Beth Goodell, Esq., Senior Attorney, CLS, Daniel L. Haller, Staff Attorney, NLSA

Panelists will discuss servicing problems, i.e., disputes over amount of arrears, debt collection violations, when to send RESPA letter; and will discuss the requirements of Act 6/Act 91. Participants will review samples of Act 6/91 notices, billing statements, etc.

Panelists will also review sample loan modification agreements to illustrate the importance and need for clients to understand the terms - pros and cons.

FHA servicing options will also be explored.

Chapter One

Introduction and Overview

STATEWIDE LEGAL SERVICES PROGRAMS AND COUNTIES

January, 2009

PROGRAMS

COUNTY(ies)

COMMONWEALTH ADVOCACY PROJECT

Referrals to this program would be through Larry Norton, Esq: lnorton@palegalaid.net, phone 717-236-9486, ext. 209, fax number – 717-233-4088.

Main Office: 118 Locust Street, Harrisburg, PA 17101, 717-236-9486

Larry Norton, Esq., Executive Director

118 Locust Street, Harrisburg, PA 17101 (717) 236-9486 Statewide

1705 Allegheny Building, 429 Forbes Ave.
Pittsburgh, PA 15219 (412) 434-6002 Statewide

COMMUNITY IMPACT LEGAL SERVICES (sub-grantee of Legal Aid of SE PA)

Referrals to this program would be through the Legal Aid of Southeastern Pennsylvania system.

1003 East Lincoln Highway
Coatesville, PA 19320 (610) 436-9150 Chester

419 Avenue of the Americas
Chester, PA 19013 (610) 436-9150 Chester

COMMUNITY LEGAL SERVICES, INC.

Referrals to this program would be through Elizabeth Goodell, Esq: bgoodell@clsphila.org, phone 215-227-2400, ext. 2424, fax number – 215-227-2435.

Main Office: 1424 Chestnut Street, Philadelphia, PA 19102, 1-215-981-3700

Deborah Freedman, Esq., Interim Executive Director

1424 Chestnut St.
Philadelphia, PA 19102 (215) 981-3700 Philadelphia

Law Center North Central
3638 N. Broad St.
Philadelphia, PA 19140 (215) 227-2400 Philadelphia

LAUREL LEGAL SERVICES

Referrals to this program would be through Cynthia Sheehan, Esq: csheehan@wpalaw.org, phone 724-836-2211, ext. 1418, fax number – 724-836-4578.

Main Office: 306 South Pennsylvania Avenue, Greensburg, PA 15601-3066, 1-724-836-2211

Cynthia Sheehan, Esq., Executive Director

306 South Pennsylvania Avenue
Greensburg, PA 15601-3066 (724) 836-2211 Westmoreland

206 S. Water Street, First Floor
Kittanning, PA 16201 (724) 548-7674 Armstrong

231 W. Main Street, Clarion, PA 16214	(814) 226-4340	Clarion
655 Church Street, Indiana, PA 15701	(724) 349-3440	Indiana
18 Western Avenue, Suite I, Brookville, PA 15825	(814) 849-3044	Jefferson
225-227 Franklin Street Suite 400, Franklin Center Johnstown, PA 15901-2524	(814) 536-8917 (888) 244-7252	Cambria

LEGAL AID OF SOUTHEASTERN PENNSYLVANIA

Referrals for all LASP counties are to Kesha James, Esq., at the Don't Borrow Trouble Hotline: kjames@lasp.org or 1-610-275-5400, ext. 132, fax number – 610-275-5406.

Main Office: 625-627 Swede Street, Norristown, PA 19401 (215) 275-5400
Harvey Strauss, Esq. and Elizabeth Fritsch, Esq., Co-Directors

1290 New Rodgers Road, Box 809 Bristol, PA 19007	(215) 781-1111	Bucks
100 Union Street Doylestown, PA 18901	(215) 340-1818	Bucks
625-627 Swede Street, Norristown, PA 19401	(610) 275-5400	Montgomery
248 King Street, Pottstown, PA 19464	(610) 326-8280	Montgomery
222 N. Walnut Street, Second Floor West Chester, PA 19380	(610) 436-9150	Chester
410 Welsh Street, Chester, PA 19013	(610) 874-8421	Delaware

MIDPENN LEGAL SERVICES

Referrals for this program would be made through Patrick Cicero, Esq: pcicero@midpenn.org, phone 717-848-3605, ext. 2603, fax number – 717-854-5431.

Main Office: 213-A North Front Street, Harrisburg, PA 17101, 717-234-0492
Rhodia Thomas, Esq., Executive Director

213-A North Front Street Harrisburg, PA 17101-2240	(717) 232-0581	Dauphin Perry
38 North Christian Street Lancaster, PA 17602	(717) 299-0971	Lancaster
501 Washington Street, Room 401 Reading, PA 19602	(610) 299-06599	Berks
29 N. Queen Street, York, PA 17403	(717) 848-3605	York
513 Chestnut Street, Lebanon, PA 17046	(717) 274-2834	Lebanon

315 N. Centre Street, Suite 201, Pottsville, PA 17901	(800) 299-6599	Schuylkill
2054 East College Avenue State College, PA 16801	(814) 238-4958	Centre Huntington Juniata
211 ½ East Locust Street Clearfield, PA 16830	(800) 326-9177	Clearfield
401 E. Louther Street, Carlisle, PA 17013	(717) 243-9400	Cumberland
230 Lincoln Way East, Suite A Chambersburg, PA 17201	(717) 264-5354	Fulton & Franklin
128 Breckinridge Street Gettysburg, PA 17325	(717) 334-7623	Adams
205 Lakemont Park Boulevard Altoona, PA 16602	(814) 943-8139	Blair
232 East Pitt Street Bedford, PA 15522	(814) 623-6189	Bedford
3 West Monument Street, Suite 203 Lewistown, PA 17044	(800) 326-9177	Mifflin

NEIGHBORHOOD LEGAL SERVICES ASSOCIATION

Referrals to this program would be primarily through Jason Hague, Esq: haguej@nlsa.us, phone, 412-486-6115, fax 412-586-6215. Jason Hague is referral for Allegheny County. Referrals for Beaver, Butler and Lawrence Counties would be through Michele DeBord, Esq: debordm@nlsa.us, phone 724-371-3901, fax number 724-378-9795.

Main Office: 928 Penn Avenue, Pittsburgh, PA 15222, 412-255-6700
Robert V. Racunas, Esq., Executive Director

928 Penn Ave., Pittsburgh, PA 15222	(412) 255-6700	Allegheny
Stone Point Landing 500 Market Street, Suite 204-A Bridgewater, PA 15009	(724) 378-0595	Beaver
Holly Pointe, Suite 301 220 South Main Street Butler, PA 16001	(724) 282-3888	Butler
Temple Building 125 East North Street, Suite 329 New Castle, PA 16101-3751	(724) 658-2677	Lawrence

NORTH PENN LEGAL SERVICES

Referrals for all North Penn Legal Services counties are to Lori Molloy, Esq., at lmolloy@northpennlegal.org, phone 610-317-5306, fax number – 610-317-8778.

Main Office: 65 East Elizabeth Avenue, Suite 800, Bethlehem, PA 18018, 610-317-8757

Victoria Coyle, Esq., Executive Director

65 East Elizabeth Avenue, Suite 800 Bethlehem, PA 18018	(610) 317-8757	Lehigh & Northampton
329 Market Street Williamsport, PA 17701	(570) 323-8741	Lycoming & Clinton
131 North Second Street Sunbury, PA 17801	(570) 286-5687	Snyder, Union, Northumberland
304B St James Complex Mansfield, PA 16933	(570) 662-7445	Tioga
168 East Fifth Street Bloomsburg, PA 17815-2206	(570) 784-8760	Columbia & Montour
Suite 410, 15 Public Square Wilkes-Barre, PA 18701	(570) 825-8567	Luzerne
145 E. Broad Street, Room 108 Hazelton, PA 18201	(570) 455-9512	Luzerne
1203 North Street Jim Thorpe, PA 18229	(570) 325-5050	Carbon
10 North 10th Street Stroudsburg, PA 18360	(570) 424-5338	Monroe & Pike
507 Linden Street, Suite 300 Scranton, PA 18503	(570) 342-0184	Lackawanna
Robinson Building, PO Box 703 Tunkhannock, PA 18657	(570) 836-5149	Wyoming
One Progress Plaza Towanda, PA 18848	(570) 265-6127	Bradford & Sullivan
Wayne County Courthouse Honesdale, PA 18431	(570) 253-1031	Wayne
Federal Building, Room 108 Montrose, PA 18801	(570) 278-4116	Susquehanna

NORTHWESTERN LEGAL SERVICES

Referrals for all counties for this program would be made through John Gandrud, Central Intake Manager at 814-452-6957, ext. 1200 or jgandrud@nwls.org, fax number – 814-452-3734.

Main office: 1001 State Street, Suite 1200, Erie, PA 16501, 814-452-6949

Robert A. Oakley, Esq., Executive Director

1001 State Street, Suite 1200 Erie, PA 16501	(814) 452-6949	Erie
1243 Liberty Street, Suite 420 Franklin, PA 16323	(814) 437-3028	Venango
1031 Roemer Boulevard, Farrell, PA 16121	(800) 753-5708	Mercer
100 Main Street Bradford, PA 16701-2023	(814) 362-6596	Cameron, Elk, McKean, Potter
Warr Penn Bldg., Room. 407 213 Third Avenue West Warren, PA 16365	(814) 726-2530	Warren & Forest
231 Chestnut Street Professional Bldg., 4th Fl. Meadville, PA 16335	(814) 724-1040	Crawford

PHILADELPHIA LEGAL ASSISTANCE

Referrals for Philadelphia County should be made through Jonathan Pyle at jpyle@philalegal.org and/or Elizabeth Goodell at bgoodell@clsphila.org, fax number – 215-227-2435.

42 South 15th Street Philadelphia, PA 19102 Anita Santos, Esq., Executive Director	(215) 981-3800	Philadelphia
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SOUTHWESTERN PENNSYLVANIA LEGAL AID SOCIETY

Referrals for this program would be made through Kristie Horrel, Esq., at 724-225-6170, ext. 224 or Kristie@splas.org, fax number – 724-228-7615.

Main Office: 10 West Cherry Avenue, Washington, PA 15301, 724-225-6170

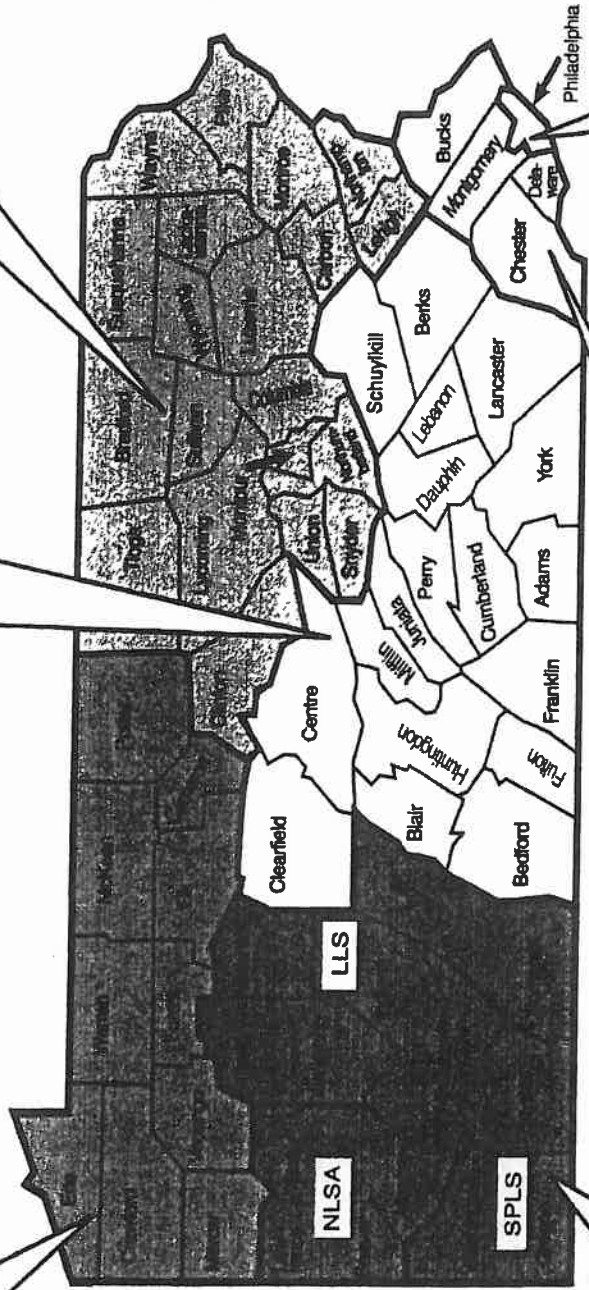
Robert Brenner, Esq., Executive Director

10 West Cherry Ave. Washington, PA 15301	(724) 225-6170	Washington
95 East High Street, Room 14 Waynesburg, PA 15370	(724) 627-3127	Greene
48 East Main Street, Uniontown, PA 15401	(724) 439-3591	Fayette
147 East Union Street Somerset, PA 15501-0341	(814) 443-4615	Somerset

Northwestern Legal Services

MidPenn Legal Services

North Penn Legal Services



Southwestern Consortium

- Neighborhood Legal Services Association
- Southwestern Pennsylvania Legal Services (SPLS)
- Laurel Legal Services (LLS)

Southeastern Pennsylvania Region

- Legal Aid of Southeastern Pennsylvania (LASP)
- Community Impact Legal Services (CILS)*

Philadelphia Region

- Community Legal Services (CLS)
- Philadelphia Legal Assistance Center (PLAC)*

Specialized Programs

These programs provide statewide legal expertise for addressing specialized legal problems or serving populations with special needs.

- Community Justice Project (CJP)
- Friends of Farmworkers (FoF)
- Pennsylvania Health Law Project (PHLP)
- Pennsylvania Institutional Law Project (PILP)
- Pennsylvania Utility Law Project (PULP)
- Regional Housing Legal Services (RHLS)

* Non-PLAN, Inc.-Funded Program

1	HUD	148	Acorn Housing Corp of PA (Phila) *H*	1
2	HUD	199	Advocates for Financial Independence *H*	1
3	HUD	190	AMERICAN CREDIT ALLIANCE *H*	1
4		213	AMERICAN CREDIT COUNSELING INSTITUTE *H*	1
5	HUD	152	ASOCIACION DE PUERTORRIQUENOS EN MARCHA *H*	1
6	HUD	106	BUCKS COUNTY HOUSING GROUP *H*	1
7		167	CARROLL PARK COMMUNITY COUNCIL *H*	1
8	HUD	145	CCCS of Delaware Valley *H*	1
9	HUD	166	CREDIT COUNSELING CENTER *H*	1
10	HUD	121	Dixon House *H*	1
11	HUD	201	HISPANIC ASSOCIATION CONTRACTORS & ENTERPRISES *H*	1
12		113	Housing Partnership Chester County *H*	1
13	HUD	163	Intercultural Family Services *H*	1
14	HUD	176	KOREAN COMMUNITY DEVELOPMENT SERVICES CENTER *H*	1
15		169	LIBERTY RESOURCES *H*	1
16	HUD	132	MT AIRY USA *H*	1
17	HUD	146	Northwest Counseling Services *H*	1
18		168	Southwest Community Development *H*	1
19	HUD		UNEMPLOYMENT INFORMATION CENTER	1
20	HUD	189	United Communities SE Phila *H*	1
21	HUD	109	Comm Action Committee Lehigh *H*	2
22	HUD	C351	Commission on Econ Opp Of Luzerne Co *H*	2
23	HUD	122	Housing Alliance of York County *H*	3
24	HUD	107	Tabor Community Services *H*	3
25		173	STEP INC *H*	4
26		184	Tableland Services, Inc *H*	4
27	HUD	111	Comm Action Southwest *H*	5
28	HUD	188	Fair Housing Prtnrshp of Pittsburgh *H*	5
29	HUD	130	Fayette County Comm Action *H*	5
30		123	Garfield Jubilee Association, Inc *H*	5
31		216	Pittsburgh Community Reinvestment Group	5
32	HUD	143	Urban League of Pittsburgh *H*	5
33	HUD	116	BAYFRONT NATO	6
34		C037	BOOKER T WASHINGTON CENTER *H*	6
35	HUD	181	Greater Erie Comm Action Comm *H*	6

36	HUD	164	Lawrence County Social Services *H*	6
37	HUD	205	Northern Tier Comm Action Corp *H*	6
38	HUD	125	St Martin Center *H*	6
39	HUD	115	Warren Forest Counties EOC *H*	6
40	HUD	117	CCCS of N E P A *H*	2,4,6
41	HUD	137	CCCS Western PA *H*	3,5,6
42	HUD	101	Housing Opportunities of Beaver County *H*	5,6
43	HUD	127	Neighborhood Housing Services, Inc *H*	4,5
44		204	OPPORTUNITY INC *H*	1,2,3
	33		*H* Agency also offers HEMAP Assistance	

846 N Broad Street	Philadelphia, PA	19130	Raquel Ravelo	215 765 0046
1806 S Broad Street	Philadelphia, PA	19145	Stephen Johnson	215-389-2810
2 South Delmorr Avenue	Morrisville, PA	19067	Joy Franklin	215 295 7195
526-528 DeKalb Street	Norristown, PA	19401	Robert Ewing	610-620-5369
600 Diamond Street	Philadelphia, PA	19122	Rose Gray	215 235 6070
2324 Second Street Pike #17	Wrightstown, PA	18940	Sherry Pace	215 598 3566
5218 Master Street	Philadelphia, PA	19131	Gertrude Weaver	215 877 1157
1608 Walnut St, 10th Floor	Philadelphia, PA	19103	Anthony Orman	215 563 5665
832 Second Street Pike	Richboro, PA	18954	Joan Reading	215 396 1880
1920 South 20th Street	Philadelphia, PA	19145	Diane Grimes	215 336 3511
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6055 N 5th Street	Philadelphia, PA	19120	Yong Chang	215 276 8830
714 Market Street, Suite 100	Philadelphia, PA	19106	Barbara Prince	215-634-2000
6703 Germantown Ave S- 200	Philadelphia, PA	19119	Stephanie Butler	215-844-6021
5001 N Broad Street	Philadelphia, PA	19141	Michelle Lewis	215 324 7500
6328 Paschall Avenue	Philadelphia, PA	19142	Latfa Collier	215 729 0800
112 N Broad St., 11 TH FL	Philadelphia, PA	19107	Jen Leith	215-620-1869
2029 S 8th Street	Philadelphia, PA	19148	Jean Lans	215 467 8700
1337 East Fifth Street	Bethlehem, PA	18015	Peggy Morton Annette Santiago	610 691 5620
165 Amber Lane	Wilkes-Barre, PA	18702	David Ritter	570-826-0510
35 South Duke Street	York, PA	17401	Steve Knaub	717 854 1541
308 East King Street, POB 1676	Lancaster, PA	17608	Robert Thomas	717 397 5182
2138 Lincoln Street	Williamsport, PA	17701	Janet Alling	570 326 0587
535 East Main Street	Somerset, PA	15501	Lisa Wengerd	814 445 9628
58 East Greene Street	Waynesburg, PA	15370	Irene Keirsblick Jeffrey Fondelier	724 225 9550
2840 Liberty Avenue	Pittsburgh, PA	15222	Tina Doose	412 391 2535
108 N Beeson Boulevard	Uniontown, PA	15401	Rita Masi	724 430 3025
5138 Penn Avenue	Pittsburgh, PA	15224	Rochelle Williams	412 665 5204
1901 Centre Ave #200	Pittsburgh, PA	15219	Randi Lowe	412 391 6732
One Smithfield Street	Pittsburgh, PA	15222	Angelicha Gibson	412 227 4163
312 CHESTNUT STREET	Erie, PA	16507	James Sherrod	814-459-2761
1720 Holland Street	Erie, PA	16503	Anita Smith	814-453-5744
18 West 9th Street	Erie, PA	16501	Stephanie Long	814 459 4581

241 West Grant Street	New Castle, PA	16103	Kristin Lombardo	724 658 7258
135 W 4th St, POB 389	Emporium, PA	15834	Randall Metcalf	814-486-1161
1701 Parade Street	Erie, PA	16503	Dave Pesch	814 452 6113
1209 Pennsylvania Ave West	Warren, PA	16365	Patricia Lobdell	814 726 2400
401 Laurel Street	Pittston, PA	18640	Craig Selner	800 922 9537
2403 Sidney Street, Suite 400	Pittsburgh, PA	15203	Mary Loftus	888 511 2227
282 East End Ave	Beaver, PA	15009	Marcie Williams	724 728 7511
710 Fifth Avenue, Suite 1000	Pittsburgh, PA	15219	Greg Simmons	412 281 1100
301 E Market Street	York, PA	17403	Rebecca Jackson	717-424-3579

Bucks, Delaware, Montgomery, Philadelphia
Delaware, Philadelphia
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Delaware, Philadelphia
Philadelphia
Philadelphia
Berks, Carbon, Lehigh, Monroe, Northampton
Carbon, Luzerne, Schuylkill, Wyoming
Adams, York
Chester, Lancaster, Lebanon
Centre, Clinton, Lycoming, Union
Cambria, Fayette, Somerset, Westmoreland
Fayette, Greene, Huntingdon, Washington, Westmoreland
Allegheny
Fayette, Somerset
Allegheny
Allegheny
Allegheny
Erie
Erie
Erie, McKean, Venango, Warren

Lawrence
Cameron, Elk, McKean, Potter
Crawford, Erie, McKean, Mercer, Venango, Warren
Forest, McKean, Warren
Blair, Bradford, Carbon, Centre, Clearfield, Clinton, Columbia, Elk, Juniata, Lackawanna, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming
Adams, Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clearfield, Crawford, Cumberland, Dauphin, Elk, Erie, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lancaster, Lawrence, Lebanon, McKean, Mercer, Mifflin, Northumberland, Perry, Somerset, Union, Venango, Warren, Washington, Westmoreland, York
Allegheny, Beaver, Lawrence
Allegheny, Armstrong, Beaver, Butler, Cambria, Fayette, Greene, Washington, Westmoreland
Adams, Philadelphia, York

Chapter Two

**Capacity and Confidentiality:
Counselors and Lawyers Coordinating
Services to Prevent Foreclosure**



Foreclosure Mitigation Counseling Initiative

Legal Aid Counseling Referral Form– Available to anyone using FMCI Legal Agency

Check Here to Expedite Services

If Foreclosure/Sheriff Sale Date is within two weeks of Referral Date

Borrower Name _____ FICO _____
Co-Borrower Name _____ FICO _____
Address _____

FMCI Legal Agency _____
Address _____
Contact Person _____
Telephone _____
Fax# _____

Provide: Case ID _____ Unique ID _____ Reason for Referral? _____ (Checklist Reason #)

Lender/Service Name: _____

Loan # _____ Loan Status at Referral _____ (i.e. 30, 60, 90 days delinquent)

Was the Client Case shared in HCO with Legal Aid Agency? Yes No

Counseling Agency Referral Information:

Name of Agency _____ Agency # _____
Address _____
Contact Person _____
Direct Contact Tel# _____

Date of Referral _____ If in Foreclosure**, Sheriff Sale Date _____ ** For cases in foreclosure, legal assistance will be limited to matters not involving litigation.

Note: The client(s) sign(s) this release; the case is shared with PHFA and Legal Aid Agency; checklist points on the following pages must be verified to determine the reason for referral prior to sending this document to the Legal Aid Agency for counseling.

Additional Comments:

I authorize the counseling agency named above to provide information and paperwork regarding my mortgage situation, including copies of my loan documents, credit report, asset and employment information and other related documentation, as requested by the Legal Aid Agency for them to provide assistance

Borrower Signature and Date

Co-Borrower Signature and Date

"NeighborWorks America, PHFA and its FMCI Counseling and Legal Aid entities certify that no one will be discriminated against on the basis of their gender, color, religion, national origin, ancestry, creed, pregnancy, marital or parental status, familial status, sexual orientation, or physical, mental, emotional or learning disability and/or special needs."

Foreclosure Mitigation Counseling Initiative

Universal Documents: Generally, the following documents will be relevant for all 11 Referral Topics/Reason for Referral.

*Document Checklist

** The Legal Aid Counseling Referral Form and the checklist documents must be sent (preferably electronically, or via Fax) prior to the Legal Aid appointment. Although you may not be able to collect all of these documents, it is recommended that you attempt to gather as much documentation as possible in order to assist with the Legal Aid referral.*

- HUD-1
 - Preliminary
 - Final
- Note
- Mortgage
- Truth in Lending Documents
- Deed
- Notices or Letters from Lender and/or Servicer
- Documentation of Escrow Balance
- Client Income and Expense Statement
- Client Listing of Debts

WHEN SHOULD CLIENT SEEK LEGAL COUNSEL—CHECKLIST

1. **Lack of Cooperation from Servicer/Lender**
- a. Lender or Servicer is not willing to work with client and legal counsel is needed to negotiate with the Lender or Servicer for an affordable interest rate or repayment plan.
 - b. Lender or Servicer is not providing the client and/or agency with requested information in a timely manner and/or reviewing servicer requirements.
 - c. Lender or Servicer is not returning the client or agency's telephone calls.
 - d. Negotiating with Lender or Servicer requires specialized legal help.
 - e. Loss mitigation efforts would benefit from assistance from legal counselor.
 - f. Assistance is needed in determining who the "real" party of interest is.
- ❖ **Documents Needed**—Letters to and from Servicer/Lender.
2. **Evidence of Abusive Servicing/Dispute over Amount of Arrears**
- a. Excessive fees appear to have been charged.
 - b. Foreclosure fees were added to the account before complaint filed (foreclosure fees appear in Act 6/91 Notice).
 - c. Client made payments that were not credited properly by the servicer in the loan history.
 - d. Advice or assistance to Counselor is appropriate on the RESPA Letter/preparing qualified written request.
- ❖ **Documents Needed**—RESPA letter and any documentation showing servicing fees and arrears.
3. **Assistance with Loan Modification**
- a. Provide clarification on short term or long term modification.
 - b. Assist with full understanding of any "unclear" or questionable language on the agreement.
- ❖ **Documentation Needed**—Drafts or proposed loan modification agreement.

4. **Pre-foreclosure/Short Sales**
- a. Negotiate with the Lender or Servicer to extend forbearance periods or postpone any foreclosure actions until the client is able to get the property listed with a reputable real estate agent, (preferably a member of **The Pennsylvania Association of REALTORS® (PAR)**).
 - b. Communicate with the real estate agent to ensure that the property is being marketed in a timely manner.
 - c. Provide advice on other options when the default appears incurable.
 - d. Assist in addressing real estate issues that may be impeding sale of property, such as other liens or judgments that cloud title.
- ❖ **Documentation Needed**—Agreements or communications with real estate agent trying to sell the property.
5. **Executing a Deed-in-Lieu**
- a. Review documents and provide advice regarding various issues, including tax implications, waiver of deficiency, forfeiture of escrow balance, etc
 - b. Explaining the forfeit of any positive Escrow balance.
 - c. Negotiate and assist with lease agreements for homeowner to stay in property subsequent to sale pending agreed upon move out schedule.
- ❖ **Documentation Needed**—Any proposed lease for client to stay in property pending sale.
6. ***Assessment of Bankruptcy Options**
- *While the legal counseling program will not allow for representation in the bankruptcy, a referral would still be appropriate to assess bankruptcy options and to prepare for filing bankruptcy. The legal counselor may then make a referral or handle the case with different funding if bankruptcy is deemed to be an appropriate option for the homeowner*
- a. A “must” referral if the counseling agency does not complete or handle bankruptcy counseling.
 - b. General analysis and advice about bankruptcy as an option, including explanation of costs associated with bankruptcy filing, judgments, bills and debts that may be renegotiated or removed through the bankruptcy process and property that could be at risk. Generally, is the bankruptcy likely to be the best option for a particular homeowner? Is the household eligible to file bankruptcy?
 - c. Help with any issues with the Trustee or bankruptcy attorneys.
 - d. To explain costs associated with bankruptcy filing and if cost is an issue for the client, to discuss filing Pro Se (define the term "pro se" as someone who represents self in a legal procedure without the aid of an attorney). Also, explaining the bankruptcy laws to the client as they pertain to someone filing under this category.
- ❖ **Documentation Needed**—Credit Report.

7. **All possible Predatory Issues & Truth in Lending Act Issues**
- a. Audit the mortgage documents to determine if mortgagor may have been a victim of a predatory loan or if the loan might be rescinded under the Truth in Lending Act;
 - b. Refer for TILA analysis if the loan was not used to make the initial purchase and if the loan is less than 3 years old;
 - c. Help determine if homeowner is a victim of a foreclosure rescue or bankruptcy scam;
 - d. Assist with Nullifying Rescue Scams
 - e. Review the HUD-1 and other mortgage financing documents;
 - f. Prepare rescission letters under TILA and HOEPA;
 - g. Prepare cancellation letters under the UDAP;
 - h. Prepare qualified written requests for RESPA;
 - i. Review applicability and protections afforded through laws and regulations governing fraud, Fair Housing and fair lending, banking and mortgage related entities.
- ❖ **Documentation Needed**—No additional documents.
8. **Individual Legal advice or counseling regardless of the FMCI Level as it relates to the foreclosure process prior to the filing of a civil complaint in foreclosure by the lender**
- a. Assist the client with responding to a Lender's Demand Letter (Act 6 Letter) "Intention to Foreclose Notice".
 - b. Interpret Loan and/or any other Legal Documents.
 - c. Review Case Files.
 - d. Provide advice on Foreclosure Rights and options and provide overview of what the process entails.
- ❖ **Documentation Needed**—Lender's demand letter and any documents accompanying demand letter.
9. **Estate Issues**
- a. Assist in providing appropriate clarification of documents and legal title issues if the occupant's name is not on the note, the mortgage or the deed.
 - b. Help the remaining occupant to understand their rights.
 - c. Assist occupant in expediting processing of intestate succession issues or formal estate filings to clarify title and ownership as appropriate.
 - d. Prepare powers of attorney, if necessary to facilitate authorization for transfer and legal representatives.
- ❖ **Documentation Needed** —Letters, notices, or other communications from Executor or Administrator of Estate and Will of any decedent relevant to current ownership.

10. Miscellaneous Assistance & Advice (Other than Litigation or Preparing for Litigation)

- a. Assist housing counselor to consider all options, including various refinancing programs listed in item 11.
 - b. In Pennsylvania (a Judicial Foreclosure State), provide assistance prior to a Foreclosure Filing.
 - c. Mediation procedures that are Non-Court related (as long as it is NOT court ordered).
 - d. Assist in reviewing and preparing assumptions and satisfactions of Mortgages—any amendments to the loan structure (i.e. Assignment of Mortgage, assist in resolving tangled Titles).
 - e. Assist with other credit issues and creditor actions affecting the homeowner that may directly impede resolution of the mortgage delinquency
 - f. Assist and provide advice regarding identity fraud cases.
 - g. Provide advice to resolve issues affecting absent members of the household.
 - h. Other.
- ❖ **Documentation Needed**—Refinancing letters or notices (letters/notices proposing terms) and any documents evidencing identity fraud.

11. HEMAP (Homeowners' Emergency Mortgage Assistance Program) and other Homeowner Assistance Programs

- a. Assistance with the HEMAP application process.
 - b. Assistance with programs such as:
 - ✓ HOPE for Homeowners
 - ✓ HERO
 - ✓ Individualized Assistance for Local Mortgage assistance and rescue Programs
 - ✓ Reverse mortgage program
 - c. Rescue financing/Refinance and Purchase Funding Programs.
 - ✓ Homeowner options for Homeowners with interest rates over 11% percent.
 - d. Higher Interest Rate.
- ❖ **Documentation Needed**—Notices regarding eligibility for HOPE, HERO HEMAP, or other assistance programs and copy of clients application for the program.

 PHFA PENNSYLVANIA HOUSING FINANCE AGENCY	Foreclosure Mitigation Counseling Initiative
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Client Name: _____ **Date:** _____

Counselor's Name: _____

Questions Counselors Should Ask Clients

Attempt to determine what specific type of help the client needs. If it regards homeownership, specifically, delinquency or foreclosure, the following questions may be helpful to you.

1. Do you want to keep your home? Yes _____ No _____
2. How long have you lived in your home? _____
3. What type of home do you have? (Single family, Bi-level, 2 unit, etc.)
4. Do you know the current value of your property?
5. Do you have a recent/current (less than 6 months) appraisal?
6. What is the condition of your home?
7. Are you behind on your mortgage payments? Yes _____ No _____
 - a. How many payments? _____
 - b. Date of last payment paid? _____ Month payment was applied to? _____
8. What are the circumstances that caused your default? (Have client write a letter of explanation.)
9. What is the name of your lender?
 - a. Address and telephone number: _____
 - b. Do you have a recent mortgage statement and/or coupon book?
Yes _____ No _____

10. Did you contact your lender? Yes _____ No _____
- a. Did you and your lender discuss any alternatives? Yes _____ No _____
 Explain: _____

- b. Name of representative that you previously spoke to. _____
11. Have you attempted to make payments only to have your lender refuse to accept them?
 Yes _____ No _____
- If yes, what did you do with your money? (e.g., put it in escrow, paid other debts, and or put it in a savings account.) (You will need the client to supply some type of documentation.)
 Explain: _____

12. What type of mortgage product do you have?
 Circle one: Conventional FHA ARM Sub-prime Other (specify) _____
13. What is your interest rate? Circle one: Fixed or adjustable?
14. Are your taxes escrowed? Yes _____ No _____
 Are your taxes paid? Yes _____ No _____
15. What is your unpaid principal balance? \$ _____
16. What are the total arrears? \$ _____
17. What is the total payoff? \$ _____
18. What is your payment history: Circle one: (30 days, 60 days, 90 days)?
19. Do you have a 2nd or 3rd mortgage or (list all other mortgages and/or liens.)

20. Do you pay condominium or association fees? Yes _____ No _____
21. Do you know if you are delinquent on any municipal liens (water, sewer, garbage removal, etc.) Yes _____ No _____
22. Have you received a tax claim statement? Yes _____ No _____

23. List all persons on the mortgage or the mortgage note (verify the spouse and co-borrowers).

24. Did you receive the Act 91 (HEMAP Application) letter? Yes _____ No _____

25. Has a sheriff sale date been set yet? Yes _____ No _____

a. If yes, what is that date? _____

26. Do you have steady income? Yes _____ No _____

27. What is the combined annual income?

(If less than \$120,000.00, may be a candidate for HERO.) \$ _____

28. Are you self-employed? Yes _____ No _____

Can you document your income? Yes _____ No _____

29. Do you have a checking and/or savings account? Yes _____ No _____

(In order to be eligible for the REAL program the client must have a checking account.)

30. Do you have a budget? Yes _____ No _____

31. Have you ever applied for a mortgage through PHFA? Yes _____ No _____

a. What type of loan? (Circle one) KHL, KHLP, or Real

b. What was the decision?

Explain: _____

32. What is your action plan to save your home?

Explain: _____

33. Would you like us to help you form an action plan? Yes _____ No _____

Client Signature **Date**

Client Signature **Date**

Date of follow up session: _____

Counselor Signature **Date**

18	19	20	21
YES	YES	YES	NO
ServicePreparingDocs	ServiceMediationArbitration	NumHours	OutcomeCode

22	23	24	25
*NO	*NO	YES-PHFA	YES-PHFA
OutcomeDate	CollaboratedWithCounselor	HCO Case #	Legal Representative Name
		1234-FMCI	Atty: John Doe

26	27
YES-PHFA	YES-PHFA
Legal Issue Outside of Leg Assistance Grant	Fee
0 = No	3

EXCERPTS

September 20, 2008

PENNSYLVANIA RULES OF PROFESSIONAL CONDUCT

Adopted by Order of the Supreme Court of Pennsylvania dated October 16, 1987
effective April 1, 1988

Text contains recent revisions & amendments which became
effective January 1, 2005, January 6, 2005, March 17, 2005, April 23, 2005,
July 1, 2006 and September 20, 2008

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PENNSYLVANIA RULES OF PROFESSIONAL CONDUCT

PREAMBLE: A Lawyer's Responsibilities

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having a special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may" or "should", are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[16] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of

confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[17] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[18] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[19] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra disciplinary consequences of violating such a duty.

[20] These Rules were first derived from the Model Rules of Professional Conduct adopted by the American Bar Association in 1983 as amended. Those Rules were subject to thorough review and restatement through the work of the ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission"), and have been subject to certain modifications in their adoption in Pennsylvania. The Rules omit some provisions that appear in the ABA Model Rules of Professional Conduct. The omissions should not be interpreted as condoning behavior proscribed by the omitted provision.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Rule 1.0 Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes an informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the consent by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "Known," or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes an equity owner in a law firm, whether in the capacity of a partner in a partnership, a shareholder in a professional corporation, a member in a limited liability company, a beneficiary of a business trust, a member of an association authorized to practice law, or otherwise.

(h) "Reasonable" or "Reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "Reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, Photostating, photography, audio or video recording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment:

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that agreement of consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of a rule that the same lawyer should not represent opposing parties in litigation, e.g., Rules 1.7(a), 1.10(a), while it might not be so regarded for purposes of a rule that information acquired by one lawyer is attributed to another, e.g., Rule 1.10(b).

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud

[5] When used in these Rules, the terms "fraud" and "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2(c), 1.6(a), 1.7(b), 1.8(a)(3), (b), (f) and (g), 1.9(a) and (b), 1.10(d), 1.11(a)(2) and (d)(2)(i), 1.12(a) and 1.18(d)(1). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. Rule 1.8(a) requires that a client's consent be obtained in a writing signed by the client. For a definition of "signed," see paragraph (n). The term informed consent in Rule 1.0 and the guidance provided in the Comment should be understood in the context of legal ethics and is not intended to incorporate jurisprudence of medical malpractice law.

Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on

the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

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

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[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. 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.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impracticable. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of 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 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).

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), 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 such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

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

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

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

Comment:

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

Rule 1.3 Diligence

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

[2] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to rule 1.8(i). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

[3] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Division of Fee

[4] 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 specialist. Paragraph (e) permits the lawyers to divide a fee if the total fee is not illegal or excessive and the client is advised and does not object. It does not require disclosure to the client of the share that each lawyer is to receive.

Disputes over Fees

[5] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

[6] It is Disciplinary Board policy that allegations of excessive fees charged are initially referred to Fee Dispute Committees for resolution.

Rule 1.6 Confidentiality of Information

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

(b) A lawyer shall reveal such information if necessary to comply with the duties stated in Rule 3.3.

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

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interests or property of another;
- (3) to prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used; or

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to secure legal advice about the lawyer's compliance with these Rules; or

(6) to effectuate the sale of a law practice consistent with Rule 1.17.

(d) The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

Comment:

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

[5] A lawyer has duties of disclosure to a tribunal under Rule 3.3(a) that may entail disclosure of information relating to the representation. Rule 1.6(b) recognizes the paramount nature of this obligation.

Authorized Disclosure

[6] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[7] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends or learn that the client has caused serious harm to another person. However, to the extent that a lawyer is required or permitted to disclose a client's purposes or conduct, the client may be inhibited from revealing facts that would enable the lawyer effectively to represent the client. Generally, the public interest is better served if full disclosure by clients to their lawyers is encouraged rather than inhibited. With limited exceptions, information relating to the representation must be kept confidential by a lawyer, as stated in paragraph (a).

[8] Where human life is threatened, the client is or has been engaged in criminal or fraudulent conduct, or the integrity of the lawyer's own conduct is involved, the principle of confidentiality may have to yield, depending on the lawyer's knowledge about and relationship to the conduct in question.

[9] Several situations must be distinguished:

[10] First, a lawyer may foresee certain death or serious bodily harm to another person. Paragraph (c)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and that the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[11] Second, paragraph (c)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime that is reasonably certain to result in substantial injury to the financial or property interests of another. Disclosure is permitted under paragraph (c)(2) only where the lawyer reasonably believes that such threatened action is a crime; the lawyer may not substitute his or her own sense of wrongdoing for that of society at large as reflected in the applicable criminal laws. The client can, of course, prevent such disclosure by refraining from the wrongful conduct.

[12] Third, a lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See Rule 1.2(d). To avoid assisting a client's criminal or fraudulent conduct, the lawyer may have to reveal information relating to the representation. Rule 1.6(c)(3) permits doing so.

[13] Fourth, a lawyer may have been innocently involved in past conduct by a client that was criminal or fraudulent. In such a situation, the lawyer did not violate Rule 1.2(d). However, if the lawyer's services were made an instrument of the client's crime or fraud, the lawyer has a legitimate and overriding interest in being able to rectify the consequences of such conduct. Rule 1.6(c)(3) gives the lawyer professional discretion to reveal information relating to the representation to the extent necessary to accomplish rectification.

[14] Fifth, where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (c)(4) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[15] Sixth, a lawyer entitled to a fee is permitted by paragraph (c)(4) to prove the services rendered in an action to collect it. This aspect of the Rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[16] Seventh, a lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (c)(5) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[17] Eighth, it is recognized that the due diligence associated with the sale of a law practice authorized under Rule 1.17 may necessitate the limited disclosure of certain otherwise confidential information. Paragraph (c)(6) permits such disclosure. However, as stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having a need to know it, and to obtain appropriate arrangements minimizing the risk of disclosure.

[18] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4.

[19] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4.

[20] Paragraph (c) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[21] Paragraph (c) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (c)(1) through (c)(6). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (c) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (c). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Withdrawal

[22] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in Rule 1.6. Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

Acting Competently to Preserve Confidentiality

[23] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

[24] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client

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

Lobbyists

[26] A lawyer who acts as a lobbyist on behalf of a client may disclose information relating to the representation in order to comply with any legal obligation imposed on the lawyer-lobbyist by the legislature, the executive branch or an agency of the Commonwealth which are consistent with the Rules of Professional Conduct. Such disclosure is explicitly authorized to carry out the representation. The Disciplinary Board of the Supreme Court shall retain jurisdiction over any violation of this Rule.

Rule 1.7 Conflict of Interest: Current Clients

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

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

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

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

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent.

Comment:

General Principles

(4) in the case of any form of association other than a professional corporation, the organic law governing the internal affairs of the association provides the equity owners of the association with greater liability protection than is available to the shareholders of a professional corporation.

Subparagraphs (1), (2) and (4) shall not apply to a lawyer employed in the legal department of a corporation or other organization.

Comment:

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment.

[2] Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[3] Paragraph (a)(4) incorporates the authorization for the sale of a law practice pursuant to Rule 1.17. Fees may be shared between a lawyer purchasing a law practice and the estate or representative of the lawyer when a law practice is sold.

[4] Paragraph (a)(5) adds a new dimension to the current Rule by specifically permitting sharing of fees with a nonprofit organization. It is a practice approved in ABA Formal Opinion 93-374.

[5] These Rules do not restrict the organization of a private law firm to certain specified forms, such as a general partnership or a professional corporation. It is permissible to organize a private law firm using any form of association desired, including, without limitations such nontraditional forms as a limited partnership, registered limited liability partnership, limited liability company or business trust, so long as all of the restrictions in paragraph (d) are satisfied.

[6] Paragraph (d)(1) recognizes that the owners of a private law firm may choose to organize their firm in such a way that it has more than one level of ownership such as, for example, a partnership composed of or including professional corporations. An ownership structure with more than one level will be permissible as long as all of the beneficial owners (as opposed to record owners) are lawyers, subject to the exception for estate administration.

[7] Underlying the restriction in paragraph (d)(4) is a recognition that there are a variety of organizational forms that may be used by a law firm that provide some level of protection from personal liability for their owners. The use of such a form of organization is permissible so long as the limitation on liability provided by that form is no more extensive than that available through the professional corporation form. See 15 Pa.C.S. § 2925. Implicit in paragraph (d)(4) is a recognition that, so long as the owners have the personal liability preserved by the professional corporation law, a limitation on other personal liability is appropriate and should be respected. The result in *First Bank & Trust Co. v. Zagoria*, 250 Ga. 844, 302 S.E.2d 674 (1983), and similar cases is rejected.

[8] Although the last sentence of subsection (d) recognizes that the restrictions in paragraph (d)(1), (2) and (4) are not properly applicable to a lawyer employed in the legal department of a corporation or other organization, it is still important to preserve the professional independence of a lawyer in that situation and thus the restriction in paragraph (d)(3) will apply to such a lawyer.

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice Of Law.

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

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules, Pa.B.A.R. 302 or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may, subject to the requirements of Pa.B.A.R. 302, provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission, except that this paragraph (d) does not authorize a lawyer who is not admitted in this jurisdiction and who is employed by the Commonwealth, any of its political subdivisions or any of their organizational affiliates to provide legal services in this jurisdiction; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Comment:

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[5] There are occasions in which lawyers admitted to practice in another foreign or United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any foreign or United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. It is also intended to allow military lawyers to practice law on a *pro bono* basis for members of the military in civil matters. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission *pro hac vice* or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission *pro hac vice* before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted *pro hac vice*. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission *pro hac vice* in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3).

These services include both legal services and services that non-lawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work. A lawyer employed by the Commonwealth or one of its organizational affiliates, however, is not entitled to the exemption provided by paragraph (d) with respect to legal services provided in this jurisdiction. In the relatively rare instance that a lawyer employed by the Commonwealth or an organizational affiliate only provides legal services outside of the Commonwealth, paragraph (d) will be applicable and the lawyer will not be required to be admitted in this jurisdiction. But in most instances, lawyers employed by the Commonwealth or one of its organizational affiliates must be admitted in this jurisdiction.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

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

(d), the lawyer takes reasonable efforts to avoid any misunderstanding by the recipient. In this respect, Rule 5.7 is analogous to Rule 4.3(c).

[9] In taking the reasonable measures referred to in paragraph (d), the lawyer must communicate to the person receiving the nonlegal services that the relationship will not be a client-lawyer relationship. The communication should be made before entering into an agreement for the provision of nonlegal services, in a manner sufficient to assure that the person understands the significance of the communication, and preferably should be in writing.

[10] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of nonlegal services, such as a publicly-held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and nonlegal services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

The Relationship Between Rule 5.7 and Other Rules of Professional Conduct

[11] Even before Rule 5.7 was adopted, a lawyer involved in the provision of nonlegal services was subject to those Rules of Professional Conduct that apply generally. For example, Rule 8.4(c) makes a lawyer responsible for fraud committed with respect to the provision of nonlegal services. Such a lawyer must also comply with Rule 1.8(a). Nothing in this rule is intended to suspend the effect of any otherwise applicable Rule of Professional Conduct such as Rule 1.7(b), Rule 1.8(a) and Rule 8.4(c).

[12] In addition to the Rules of Professional Conduct, principles of law external to the Rules, for example, the law of principal and agent, may govern the legal duties owed by a lawyer to those receiving the nonlegal services.

PUBLIC SERVICE

Rule 6.1 Voluntary Pro Bono Publico Service

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

Comment:

[1] The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This Rule expresses that policy but is not intended to be enforced through disciplinary process.

[2] The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

[3] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer

referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.

[4] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

Rule 6.2 Accepting Appointments

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

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

Comment:

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

Rule 6.3 Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Comment:

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

Rule 6.4 Law Reform Activities Affecting Client Interests

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

Comment:

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefited.

Rule 6.5 Nonprofit and Court Appointed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

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

Comment:

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the

client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rule 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1 Communications Concerning a Lawyer's Service

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Comment:

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

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

[4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

