Between 65 And Death

Posted on 24/05/2018by mevh2hpsgfr80

Many of us are between 65 and death . An old friend sent me this excellent list for aging , and , I have to agree it's good advice to follow ... particularly the item 19 .

01 – It's time to use the money you saved up . Use it and enjoy it . Don't just keep it for those who may have no notion of the sacrifices you made to get it . Remember there is nothing more dangerous than a son or daughter-in-law with big ideas for your hard-earned capital . Warning : This is also a bad time for investments , even if it seems wonderful or fool-proof . They only bring problems and worries . This is a time for you to enjoy some peace and quiet .

02 – Stop worrying about the financial situation of your children and grandchildren , and don't feel bad spending your money on yourself . You've taken care of them for many years , and you've taught them what you could . You gave them an education , food , shelter and support . The responsibility is now theirs to earn their own money .

03 – Keep a healthy life , without great physical effort . Do moderate exercise (like walking every day) , eat well and get your sleep . It's easy to become sick , and it gets harder to remain healthy . That is why you need to keep yourself in good shape and be aware of your medical and physical needs . Keep in touch with your doctor , do tests even when you're feeling well . Stay informed .

04 – Always buy the best , most beautiful items for your significant other . The key goal is to enjoy your money with your partner . One day one of you will miss the other , and the money will not provide any comfort then , enjoy it together .

05 – Don't stress over the little things . You've already overcome so much in your life . You have good memories and bad ones , but the important thing is the present . Don't let the past drag you down and don't let the future frighten you . Feel good in the now . Small issues will soon be forgotten .

06 – Regardless of age , always keep love alive . Love your partner , love life , love your family , love your neighbor and remember : *A man is not old as long as he has intelligence and affection .*

07 – Be proud , both inside and out . Don't stop going to your hair salon or barber , do your nails , go to the dermatologist and the dentist , keep your perfumes and creams well stocked . When you are well-maintained on the outside , it seeps in , making you feel proud and strong .

08 – Don't lose sight of fashion trends for your age , but keep your own sense of style . There's nothing worse than an older person trying to wear the current fashion among

youngsters . You've developed your own sense of what looks good on you – keep it and be proud of it . It's part of who you are .

09 – Always stay up-to-date . Read newspapers , watch the news . Go online and read what people are saying . Make sure you have an active email account and try to use some of those social networks . You'll be surprised what old friends you'll meet . Keeping in touch with what is going on and with the people you know is important at any age .

10 – Respect the younger generation and their opinions . They may not have the same ideals as you , but they are the future , and will take the world in their direction . Give advice , not criticism , and try to remind them that yesterday's wisdom still applies today .

11 – Never use the phrase *In my time* . Your time is now . As long as you're alive , you are part of this time . You may have been younger , but you are still you now , having fun and enjoying life .

12 – Some people embrace their golden years , while others become bitter and surly . Life is too short to waste your days on the latter . Spend your time with positive , cheerful people , it'll rub off on you and your days will seem that much better . Spending your time with bitter people will make you older and harder to be around .

13 – Do not surrender to the temptation of living with your children or grandchildren (if you have a financial choice , that is) . Sure , being surrounded by family sounds great , but we all need our privacy . They need theirs and you need yours . If you've lost your partner (our deepest condolences) , then find a person to move in with you and help out . Even then , do so only if you feel you really need the help or do not want to live alone .

14 – Don't abandon your hobbies . If you don't have any , make new ones . You can travel , hike , cook , read , dance . You can adopt a cat or a dog , grow a garden , play cards , checkers , chess , dominoes , golf . You can paint , volunteer or just collect certain items . Find something you like and spend some real time having fun with it .

15 – Even if you don't feel like it , try to accept invitations . Baptisms , graduations , birthdays , weddings , conferences . Try to go . Get out of the house , meet people you haven't seen in a while , experience something new (or something old) . But don't get upset when you're not invited . Some events are limited by resources , and not everyone can be hosted . The important thing is to leave the house from time to time . Go to museums , go walk through a field . Get out there .

16 – Be a conversationalist . Talk less and listen more . Some people go on and on about the past , not caring if their listeners are really interested . That's a great way of reducing their desire to speak with you . Listen first and answer questions , but don't go off into long stories unless asked to . Speak in courteous tones and try not to complain or criticize too much unless you really need to . Try to accept situations as they are . Everyone is

going through the same things , and people have a low tolerance for hearing complaints . Always find some good things to say as well .

17 – Pain and discomfort go hand in hand with getting older . Try not to dwell on them but accept them as a part of the cycle of life we're all going through . Try to minimize them in your mind . They are not who you are , they are something that life added to you . If they become your entire focus , you lose sight of the person you used to be .

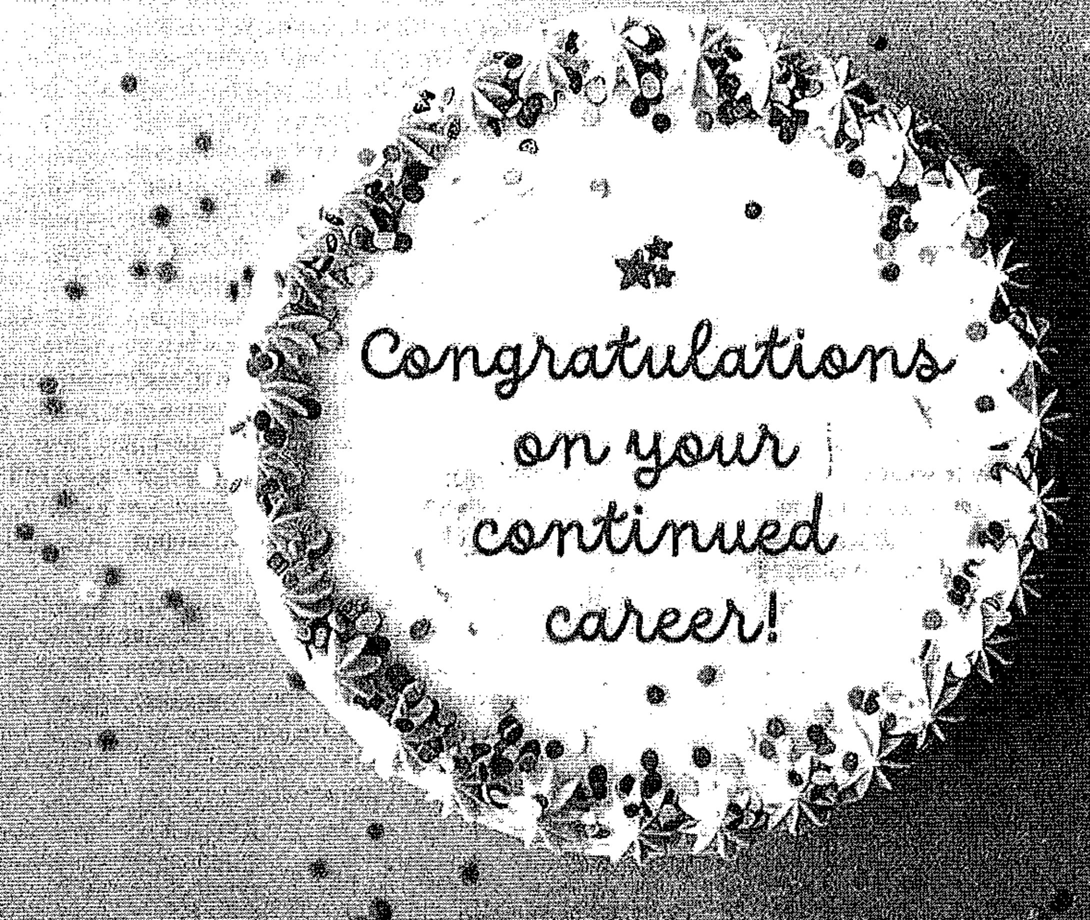
18 – If you've been offended by someone – forgive them . If you've offended someone – apologize . Don't drag around resentment with you . It only serves to make you sad and bitter . It doesn't matter who was right . Someone once said : *Holding a grudge is like taking poison and expecting the other person to die .* Don't take that poison . Forgive , forget and move on with your life .

19 – If you have a strong belief , savor it . But don't waste your time trying to convince others . They will make their own choices no matter what you tell them , and it will only bring you frustration . Live your faith and set an example . Live true to your beliefs and let that memory sway them .

20 – Laugh A Lot . Laugh at everything . Remember , you are one of the lucky ones . You managed to have a life , a long one . Many never get to this age , never get to experience a full life . But you did . So what's not to laugh about ? Find the humor in your situation .

21 – Take no notice of what others say about you and even less notice of what they might be thinking . They'll do it anyway , and you should have pride in yourself and what you've achieved . Let them talk and don't worry . They have no idea about your history , your memories and the life you've lived so far . There's still much to be written , so get busy writing and don't waste time thinking about what others might think . Now is the time to be at rest , at peace and as happy as you can be !

And , Remember : *Life is too short to drink bad wine ! ! !* Or , in my case , bad Arnold Palmer . (Or in my case, to smoke a bad cigar. – Rik)



Retirement Is No Time to Stop Working

Not sure you want to completely walk away from work, but unsure of what you'd like to do? These tips can help you plan your future.

IDA O. ABBOTT

cake image: Ruth Black/iStock/Getty Images Plus/via Getty Images; photo manipulation: Jill Tedhams

If you're like most lawyers, it's hard to imagine retiring. Work has long been at the center of your life. It represents what you know, what you do, and what your place is in the world. It provides structure and routine, as well as income and prestige.

Being part of the legal profession also creates a sense of belonging and community. Even when you complain about time demands or office frustrations, you can feel valued for your service to clients and society.

It's hard to give all that up.

The wonderful thing about retirement is that it presents you with choices. Retirement isn't just an event but a new stage of life, and there are no rules that govern what you should or shouldn't do. You can design the life you want and include what you desire and exclude what you don't. If you find purpose and stimulation in nonwork activities, you're free to pursue them. And if you want to keep working, you can; retirement doesn't mean you have to stop.

WHY SO MANY KEEP WORKING

Continuing to work as long as you can and want to is one way to make the most of retirement. Working longer, especially at something you enjoy and find meaningful, contributes to a sense of well-being and purpose that may actually increase longevity and quality of life.

While the benefits of a work-free retirement are more relaxation, less stress, and time for recreation and self-care, studies have shown that retiring can also have a downside. It can lead to poor health habits, such as more alcohol consumption and overeating; physical inactivity; the loss of social connections; boredom; isolation; depression; and even earlier mortality.

This kind of retirement is what Malcolm Forbes referred to when he once said, "Retirement kills more people than hard work ever did."

Studies have shown that one of the most critical factors for well-being in retirement is remaining active and engaged doing something meaningful and of value. Work is one of the best ways to do that.

That's one of the reasons few people today leave work behind entirely when they retire. According to a 2018 Deloitte report [deloitte.com/us/en/insights/focus/technology-and-the-future-of-work/redesigning-work-for-our-aging-workforce.html], 85 percent of Baby Boomers plan to work into their 70s and even 80s.

In fact, a 2016 blog post by the U.S. Department of Labor stated that people over 55 are the fastest-growing labor group; by 2024 they'll represent 1 of every 4 workers (in 1994 they were 1 in 10). Another 2018 Deloitte report [deloitte.com/us/en/insights/focus/human-capital-trends/2018/advantages-implications-of-aging-workforce.html] asserts that they're also the largest group of entrepreneurs. And the self-employment rate among workers 65 and older is the highest of any age group in America, according to Next Avenue [nextavenue.org/bored-boomer-in-retirement/]. It also reports that even people who retire often unretire; one-third of retirees eventually return to the workplace either full- or part-time.

So if you decide to keep working when you retire, you'll have plenty of company. That doesn't mean you need to continue practicing law the same way you do now or practice law at all. It doesn't mean you have to get paid or to work every day. But it does mean you need to get clear about the kind of work you want to do and start taking steps to make it happen.

THERE'S MORE TIME TO FILL

In the past, retirement was seen as a clean break from work. After a lifetime of labor, retirees deserved to abstain from work for the few short years they had left. After all, in 1960 the average life expectancy was 70 years, or about 5 years post-retirement if you quit your job at 65. Today, the average life expectancy is 78.

In fact, the older you are, the longer you can expect to live. Using Social Security Administration data, the American Psychological Association reports that if you're 65 today, you may live, on average, another 20 years (until age 84.3 for men and age 86.6 for women). And you might live much longer. About 1 out of every 4 65-year-olds today will live past age 90, and 1 out of 10 will live past age 95 [apa.org/pi/aging/lifespan.pdf].

That's a long time to do nothing but relax.

It's important to keep in mind that longevity hasn't simply added years to old age. Better health and medical care have improved the quality of life at every age and pushed old age to limits we never imagined possible.

As cultural anthropologist Mary Catherine Bateson explained, our longer life span has created a new stage of life in our middle years, a second stage of active adulthood between middle and old age, which can be enormously productive [penguinrandomhouse.com/books/9534/composing-a-further-life-by-mary-catherine-bateson/]. As longevity increases further, this new stage is allowing people to design new kinds of lives in their 60s, 70s, and up.

Although as a society we still consider the mid-60s as "retirement age," there's no right or natural age to retire. The concept of retirement isn't based on biology or any other innate phenomena; "retirement age" is an artificial social construct created by legislation and corporate policies.

Most lawyers of almost any age don't think of themselves as old enough to retire. That's not surprising. Generally speaking, lawyers in their 60s, 70s, and 80s today are healthier, more energetic, and more engaged than people used to be at the same age.

WORK OPTIONS IN RETIREMENT

As you look forward to a long, healthy life, it's important to contemplate what you want to do with all that time. To maintain ongoing satisfaction and well-being, it will be important to include all of these characteristics:

- Intellectual stimulation
- Physical activity
- Social connections
- Creative outlets
- A feeling of usefulness or sense of purpose

If leisure and recreation provide you with these elements, they're perfectly fine choices and you can leave work out of the picture. If you do want to work, you need to decide on the kind of work you want to do.

You have countless choices. Many of them may not be obvious to you. You might want to continue practicing law in some fashion. But as a lawyer, you have many valuable skills and talents that can easily transfer to other legal and nonlegal work. The opportunities are vast, depending on how clear and prepared you are when you go looking for them. That's why it's best to give yourself adequate time to learn about and explore possibilities.

If you want to work in the law, here are some options:

- Remaining at your firm or company part-time as a lawyer, teacher, mentor, strategic consultant, or client ambassador
- Working part-time or on a project basis for another legal employer
- Working on pro bono matters on your own, with a firm, or through a legal services agency
- Becoming a consultant in the area of your legal expertise
- Opening your own law practice, possibly with other retired lawyers
- Teaching
- Writing and blogging on legal topics
- Starting a podcast on legal topics

Outside of the law, you might try:

- An encore career
- Starting a business
- Becoming an activist
- Volunteering for a cause or organization you care about
- Being a gig worker using online platforms to find freelance jobs

There's no certainty that you'll be able to land the ideal work situation when you retire, especially if you wait until the last minute. But planning can make it more likely that you can find or create the work that suits your needs, interests, and priorities. Doing that requires taking adequate time in advance to analyze what your needs, interest, and priorities are.

To give you a start, here are three questions to consider:

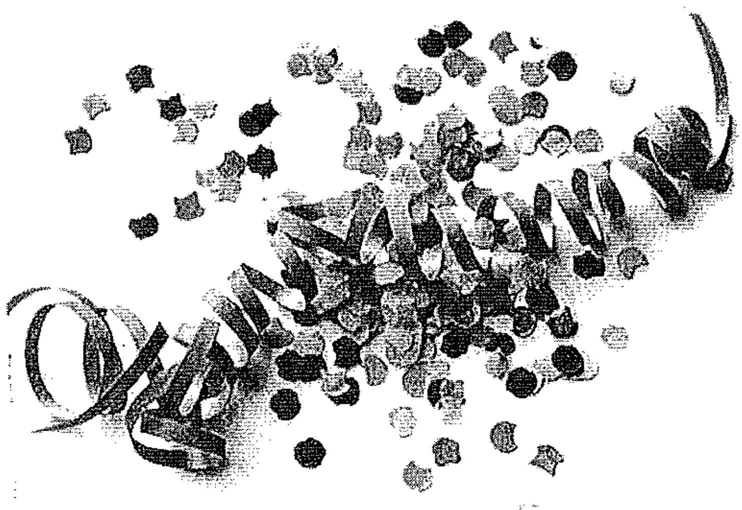
Why is work important to me? Work has been a central part of your entire adult life, but have you thought about what work actually means to you? Retirement is a good time to examine why you want to continue working and what you hope to derive from work. The factors that push you to continue will affect the kind of work you'll find most satisfying.

Retired lawyers continue to work for many reasons. Some of their principal motivators include:

- Making an impact
- Being of service
- Contributing to the public good
- Making money
- Finding intellectual stimulation
- Securing recognition and respect
- Maintaining and building social connections
- Enjoying new challenges
- Fulfilling an unrealized dream
- Leaving a legacy

As you examine your motivation to keep working, you can also consider the relationship of work to your values. Your values are the principles you stand

Retirement offers a chance to rebalance aspects of life important to you. As you make choices about the future, you can relegate work to a different level in your priorities.



for and the things most important to you. In retirement, you can deliberately choose work that supports and expresses those values. When your work is in sync with your values, your life is more balanced and fulfilling.

How much of a work commitment am I willing to make? Retirement is a time of reviewing and resetting priorities. During your career, work consumed most of your time. It may have dominated your life to the detriment of other important areas, including family, relationships, health, and creative pursuits. Retirement offers a chance to rebalance aspects of life important to you. As you make choices about the future, you can relegate work to a different level in your priorities.

Think about how much time you want to devote to work and the degree of responsibility you want to assume. Time and responsibility are related. The more responsibility you have, the greater your time commitment may be. The key is to set clear limits so that you don't find yourself overwhelmed by responsibilities that take up more time than you want.

How does money relate to my choices? If you need to work for the income, then you'll likely look for a paying job. But if you don't need the money, how important is it for you to be paid for what you do?

Some people feel that unpaid work has little value. Lawyers who bill by the hour and believe that time is money may see the proof of work's value in compensation. But for many others, especially when they retire, work can have intrinsic value and needs no financial reward. The work itself is meaningful. It offers a way to build a legacy, give back, or pursue a passion, and the effort is its own reward.

Analyzing your work motivations, needs, interests, priorities, and desires will help you determine how to best fit work into your retirement. The answers to these three questions will help you begin your evaluation and provide you with guidance going forward. ■

IDA O. ABBOTT [idaabbott.com] is a lawyer, consultant, author, and speaker who specializes in lawyers' career development, advises law firms about retirement processes, and works with senior lawyers as a retirement mentor and coach. She's a fellow of both the American Bar Foundation and the College of Law Practice Management. Her most recent book is *Retirement by Design* [idaabbott.com/books/retirement-by-design/].

Lawyers, we can sell our practice. Quite a concept. Yet prior to the passage of an ethical rule permitting the sale, we lawyers were the only profession/business that could not sell our practice.

Most all of the state rules that allow a lawyer to sell a practice including goodwill provided certain conditions are met, have been modeled after the ABA model Rule, 1.17 adopted by the ABA House of Delegates on Feb. 12, 1990, which amended the Model Rules of Professional Conduct. (See ABA Model Rule 1.17 Exhibit A hereto.)

Prior to the passage of the ABA Model Rule 1.17 in 1990, various reasons were always given for the prohibition against selling of a law practice. The most prevalent view, prohibiting lawyers from enjoying the financial fruits of our labor, was that very sacred right that clients have the ultimate right to choose who their lawyer will be and, somehow, the sale of one's law practice would interfere with that right.

Although the ABA Model Sale of Law Practice Rule was adopted in 1990, our own Ohio Supreme Court, in an opinion issued in 1992, (Opinion 92-19 Oct. 16, 1992) stated emphatically that it was improper under Ohio's then Code of Professional Responsibility for a lawyer to purchase client files and lists from another attorney. In addition to stating such a transaction would improperly impair a client's freedom to choose counsel since any change in counsel must first be approved by the client, the court stated that such sale/purchase would violate then Disciplinary Rule 2-103 (B) by improperly compensating another for a referral. The court further provided that selling of one's practice would also violate then Rules 4-101B (1) and (3) by failing to preserve, or by using to another's advantage, client confidences and secrets.

This opinion could not have been a surprise as an earlier opinion by the Ohio State Bar Association's (OSBA) Opinion Review Subcommittee likewise opined that lawyers were prohibited from entering into an agreement to purchase the practice of another lawyer on the basis of a percentage payment from newly opened cases. (See OSBA Opinion 81-9, issued November 4, 1981, Exhibit B here to also citing 1945 ABA Opinion 266).

"Clearly our rule, as do most all other state rules allowing the sale of a law practice, does protect that most important right of a client to choose one's counsel."

Interestingly though, the OSBA opinion did at least open the door to allowing the sale of one's practice when it stated,

[I]t would seem that you might be able to structure an agreement in which the amount payable would be based on services already rendered by the selling attorney. It would not appear that there would be anything improper if terms of payment of the already computed amount would be based on some percentage of your own gross receipts from future work, provided, however, that at the end of some reasonable term the total sum would be due to the selling attorney.

So history was not on the side of permitting the sale of a law practice. It was not until Feb. 1, 2003 that our own Ohio Supreme Court formally adopted Rule 1.17 Sale of Law Practice Rule (substantially modeled after the ABA Model rule).

Clearly our rule, as do most all other state rules allowing the sale of a law practice, does protect that most important right of a client to choose one's counsel. That right to choose remains paramount, survives and is protected. Now we, as with all other professions and businesses, can finally sell our practice, if certain conditions are met.

Rule 1.17 provides that the selling attorney must stop the practice of law, the entire practice must be sold, the practice may not be purchased for resell, proper notice to clients must be given and the right to choose their counsel must be preserved.

Before starting negotiations for the sale/purchase, the parties must enter into a confidentiality agreement. No particular form is required, but the prospective purchasing lawyer/law firm must agree that information relating to the representation of the clients, confidentiality, must be consistent with Rule 1.6, as if those clients were clients of the prospective purchasing lawyer. (Rule 1.1(C)). Only then may the selling attorney and prospective buyer begin negotiations and the sharing of information, financial and otherwise. Rule 1.17(0) requires any final agreement must contain certain terms. Those terms include, but are not limited to, that the purchasing attorney must honor all existing fee agreements for ongoing matters. New matters may be separately agreed upon.

The agreement may also allow reasonable, non-competition provisions and provisions that would limit the selling attorney from the reentering the practice of law for a specific period of time and a specific geographic area.

I have found no specific case law in an attorney sale of a law practice transaction reviewing terms of a non-compete agreement, but one can only assume that traditional terms of reasonableness of time and scope that courts apply to all other types of non-compete agreements might well apply. The required information included in the notice to clients is set forth in Rule 1.17(E) (1 through 5). A key component to the notice is a client's consent and that such consent to the sale will be presumed if the client does not take action or otherwise object within 90 days of the receipt of the notice.

Since the adoption of the Ohio Sale of Law Practice rule, Ohio lawyers now have the ability to enjoy the financial fruits of their labor rather than just walking away without the opportunity to enjoy the financial rewards permitted for all other professions and businesses.

While there are nuances and expertise needed in the sale of any business, if our ethical rule 1.17 is followed, not only does the selling attorney gain, but the clients to whom we all owe our ultimate responsibility also benefit.

About the Author

Thomas J. Bonasera is a partner in the corporate department of Dinsmore & Shohl LLP where he advises his clients on a broad range of trust and estate planning and litigation matters, obligations, and liabilities of trustees and other fiduciaries and trust and estate beneficiary rights and closely held business matters, including business disputes. He is a frequent lecturer on trusts and estates, fiduciary litigation and administration case law updates, special needs trusts and planning, wrongful death settlements and notice, Ohio Trust Code, closely held business matters and disputes, selling and buying law practices, and making the most of your practice. He earned his law degree from Capital University Law School.

We answer your inquiry in the affirmative.

A lawyer who has been suspended from the practice of law by the Supreme Court of Ohio for a definite or indefinite period of time is, during the time of his suspension, a non-lawyer within the meaning of the Code of Professional Responsibility, and by order of the Supreme Court, must divest himself of his law practice in accordance with the terms set forth in the order of suspension.

DR 3-102(A), Code of Professional Responsibility, with certain exceptions not applicable here, prohibits a lawyer from sharing fees with a non-lawyer. This provision would prohibit you from entering into an agreement to purchase the practice of a suspended lawyer on the basis of a "percentage payment from newly opened cases." For a similar ruling under the Canons of Professional Ethics, see ABA Opinion 266 (1945), copy enclosed.

The Opinion of the subcommittee is concurred in by Messrs. E. Clark Morrow, Robert N. Farquhar, Judge John L. Beckley and Frank E. Quirk.

Mr. Eugene N. Balk, although concurring in the majority opinion, would add the following paragraph to the above opinion.

It would seem that you might be able to structure an agreement in which the amount payable would be based upon services already rendered by the suspended attorney. It would not appear that there would be anything improper if terms of payment of the already computed amount would be based on some percentage of your own gross receipts from future work, provided, however, that at the end of some reasonable term the total sum would be due to the suspended attorney.

Very truly yours,
OPINIONS REVIEW SUBCOMMITTEE

RULE 1.17 SALE OF LAW PRACTICE

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

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

We answer your inquiry in the affirmative.

A lawyer who has been suspended from the practice of law by the Supreme Court of Ohio for a definite or indefinite period of time is, during the time of his suspension, a non-lawyer within the meaning of the Code of Professional Responsibility, and by order of the Supreme Court, must divest himself of his law practice in accordance with the terms set forth in the order of suspension.

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Very truly yours,
OPINIONS REVIEW SUBCOMMITTEE

OHIO LEGAL CENTER

Telephone: 614/421-2121

November 4, 1981

Dear Mr.

You have submitted the following inquiry for opinion of the Committee on Legal Ethics and Professional Conduct:

> "I write to request a formal Opinion concerning the ethics and the mechanics of more or less purchasing the private practice of an attorney who was recently suspended indefinitely from Ohio practice.
>
> "Specifically: I may be invited to assume the open caseload of a suspended attorney. Unfortunately, I cannot 'purchase' his practice outright due to the financial limitations of my own practice. I would hope to enter into some kind of agreement whereby I would tender to the suspended attorney a percentage of his outstanding accounts receivable and a prospective percentage of future, office income from cases which I may open.
>
> "My question: Is a prospective, separation agree-

(134th General Assembly)
(Senate Bill Number 13)

AN ACT

To amend sections 2305.03, 2305.06, 2305.07, and 2305.11 and to enact section 2305.117 of the Revised Code to shorten the period of limitations for actions upon a contract; to make changes to the borrowing statute pertaining to applicable periods of limitations; and to establish a statute of repose for a legal malpractice action.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2305.03, 2305.06, 2305.07, and 2305.11 be amended and section 2305.117 of the Revised Code be enacted to read as follows:

Sec. 2305.03. (A) Except as provided in division (B) of this section and unless a different limitation is prescribed by statute, a civil action may be commenced only within the period prescribed in sections 2305.04 to 2305.22 of the Revised Code. If interposed by proper plea by a party to an action mentioned in any of those sections, lapse of time shall be a bar to the action.

(B) No ~~civil~~ tort action, as defined in section 2305.236 of the Revised Code, that is based upon a cause of action that accrued in any other state, territory, district, or foreign jurisdiction may be commenced and maintained in this state if the period of limitation that applies to that action under the laws of that other state, territory, district, or foreign jurisdiction has expired or the period of limitation that applies to that action under the laws of this state has expired.

(C) No action upon a specialty or an agreement, contract, or promise in writing, other than an action described in division (C) of section 2305.07 of the Revised Code, that seeks post-default interest at a rate governed by or provided in the substantive laws of any other state, territory, district, or foreign jurisdiction, and in excess of the rate of interest provided by section 5703.47 of the Revised Code, may be commenced and maintained in this state if the period of limitation that applies to that action under the laws of that other state, territory, district, or foreign jurisdiction has expired or the period of limitation that applies to that action under the laws of this state has expired.

(D) No action described in division (C) of section 2305.07 of the Revised Code that seeks post charge-off interest at a rate governed by or provided in the substantive laws of any other state, territory, district, or foreign jurisdiction, and in excess of the rate of interest provided by section 5703.47 of the Revised Code, may be commenced and maintained in this state if the period of limitation that applies to that action under the laws of that other state, territory, district, or foreign jurisdiction has expired or the period of limitation that applies to that action under the laws of this state has expired.

Sec. 2305.06. Except as provided in sections 126.301 ~~and~~, 1302.98, 1303.16, 1345.10, and 2305.04 of the Revised Code, an action upon a specialty or an agreement, contract, or promise in writing shall be brought within ~~eight~~ six years after the cause of action accrued.

Sec. 2305.07. (A) Except as provided in sections 126.301 and 1302.98 of the Revised Code, an action upon a contract not in writing, express or implied, or shall be brought within four years after the cause of action accrued.

(B) An action upon a liability created by statute other than a forfeiture or penalty, shall be brought within six years after the cause thereof of action accrued.

(C) Except as provided in sections 1303.16, 1345.10, and 2305.04 of the Revised Code, and notwithstanding divisions (A) and (B) of this section, section 1302.98, and division (B) of section 2305.03 of the Revised Code, an action arising out of a consumer transaction incurred primarily for personal, family, or household purposes, based upon any contract, agreement, obligation, liability, or promise, express or implied, including an account stated, whether or not reduced to writing or signed by the party to be charged by that transaction, shall be commenced within six years after the cause of action accrued. For purposes of this division, a cause of action accrues thirty calendar days after the date of the last charge or payment by, or on behalf of, the consumer, whichever is later.

Sec. 2305.11. (A) An action for libel, slander, malicious prosecution, or false imprisonment, an action for malpractice other than an action upon a medical, dental, optometric, or chiropractic claim, an action for legal malpractice against an attorney or a law firm or legal professional association, or an action upon a statute for a penalty or forfeiture shall be commenced within one year after the cause of action accrued, provided that an action by an employee for the payment of unpaid minimum wages, unpaid overtime compensation, or liquidated damages by reason of the nonpayment of minimum wages or overtime compensation shall be commenced within two years after the cause of action accrued.

(B) A civil action for unlawful abortion pursuant to section 2919.12 of the Revised Code, a civil action authorized by division (H) of section 2317.56 of the Revised Code, a civil action pursuant to division (B) of section 2307.52 of the Revised Code for terminating or attempting to terminate a human pregnancy after viability in violation of division (A) of section 2919.17 of the Revised Code, and a civil action for terminating or attempting to terminate a human pregnancy of a pain-capable unborn child in violation of division (E) of section 2919.201 of the Revised Code shall be commenced within one year after the performance or inducement of the abortion or within one year after the attempt to perform or induce the abortion in violation of division (A) of section 2919.17 of the Revised Code or division (E) of section 2919.201 of the Revised Code.

(C) As used in this section, "medical claim," "dental claim," "optometric claim," and "chiropractic claim" have the same meanings as in section 2305.113 of the Revised Code.

Sec. 2305.117. (A) Except as otherwise provided in this section, an action upon a legal malpractice claim against an attorney or a law firm or legal professional association shall be commenced within one year after the cause of action accrued.

(B) Except as to persons within the age of minority or of unsound mind as provided by section 2305.16 of the Revised Code, and except as provided in division (C) of this section, both of the following apply:

(1) No action upon a legal malpractice claim against an attorney or a law firm or legal professional association shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the legal malpractice claim.

(2) If an action upon a legal malpractice claim against an attorney or a law firm or legal

professional association is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the claim, then, any action upon that claim is barred.

(C)(1) If a person making a legal malpractice claim against an attorney or a law firm or legal professional association, in the exercise of reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within three years after the occurrence of the act or omission, but, in the exercise of reasonable care and diligence, discovers the injury resulting from that act or omission before the expiration of the four-year period specified in division (B)(1) of this section, the person may commence an action upon the claim not later than one year after the person discovers the injury resulting from that act or omission.

(2) A person who commences an action upon a legal malpractice claim under the circumstances described in division (C)(1) of this section has the affirmative burden of proving, by clear and convincing evidence, that the person, with reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within the three-year period described in that division.

Section 2. That existing sections 2305.03, 2305.06, 2305.07, and 2305.11 of the Revised Code are hereby repealed.

Section 3. (A) Subject to Sections 4 and 5 of this act, sections 2305.06 and 2305.07 of the Revised Code, as amended by this act, apply to an action in which the cause of action accrues on or after the effective date of this act.

(B) Division (B) of section 2305.03 of the Revised Code, as amended by this act, applies retroactively to April 7, 2005, the effective date of S.B. 80 of the 125th General Assembly.

Section 4. For causes of action that are governed by section 2305.06 of the Revised Code and that accrued prior to the effective date of this act, the period of limitations shall be six years from the effective date of this act or the expiration of the period of limitations in effect prior to the effective date of this act, whichever occurs first.

Section 5. (A) For causes of action that are governed by division (A) of section 2305.07 of the Revised Code that accrued prior to the effective date of this act, the period of limitations shall be four years from the effective date of this act or the expiration of the period of limitations in effect prior to the effective date of this act, whichever occurs first.

(B) For causes of action that are governed by division (C) of section 2305.07 of the Revised Code that accrued prior to the effective date of this act, the period of limitations shall be six years from the effective date of this act or the expiration of the period of limitations in effect prior to the effective date of this act, whichever occurs first.

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Speaker ___________________ *of the House of Representatives.*

____

President ___________________ *of the Senate.*

Passed ________________________, 20____

Approved ________________________, 20____

____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of __________, A. D. 20____.

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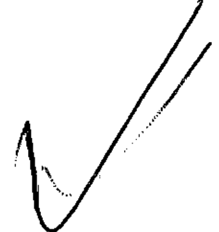
Secretary of State.

File No. _________ Effective Date ___________________

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Disciplinary Counsel v. Deters*, Slip Opinion No. 2021-Ohio-2706.]



NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2021-OHIO-2706

DISCIPLINARY COUNSEL *v.* DETERS.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Disciplinary Counsel v. Deters*, Slip Opinion No. 2021-Ohio-2706.]

Unauthorized practice of law—Permanent injunction issued and civil penalty imposed.

(No. 2020-1497—Submitted March 3, 2021—Decided August 10, 2021.)

ON FINAL REPORT by the Board on the Unauthorized Practice of Law of the Supreme Court, No. UPL 19-03.

Per Curiam.

{¶ 1} Respondent, Eric C. Deters, of Independence, Kentucky, was admitted to the Ohio bar in 1987 and permanently retired from the practice of law in Ohio on September 17, 2014, following the suspension of his Kentucky law license. Following Deters's Ohio retirement, he transferred ownership of his law

firm, Deters & Associates, P.S.C. ("Deters Law"), to his father and continued to work as the office manager and a client liaison for the firm.

{¶ 2} In an April 5, 2019 complaint, relator, Disciplinary Counsel, charged Deters with engaging in the unauthorized practice of law by giving legal advice to Clinton and Jillian Pangallo, who had retained Deters Law to represent them regarding an Ohio-based personal-injury claim.

{¶ 3} A three-member panel of the Board on the Unauthorized Practice of Law conducted a hearing during which it heard testimony from Deters and the Pangallos. In an October 2020 report, the panel found that Deters had engaged in four instances of the unauthorized practice of law by giving the Pangallos legal advice about their case: three during a meeting in which he persuaded them not to terminate his firm's representation and one in a subsequent telephone call.

{¶ 4} The panel recommended that Deters be permanently enjoined from engaging in the unauthorized practice of law and that we impose a civil penalty of $6,500. The board adopted the panel's findings and recommendation that Deters be enjoined from engaging in the unauthorized practice of law, but it recommended that the civil penalty be doubled to $13,000.

{¶ 5} For the reasons that follow, we find that Deters engaged in a single instance of the unauthorized practice of law by giving case-specific legal advice to clients of the law firm that employed him. We therefore permanently enjoin him from engaging in further acts of the unauthorized practice of law and order him to pay a civil penalty of $6,500.

Deters's Conduct

{¶ 6} On September 8, 2017, Clinton Pangallo was injured in an auto accident while driving his employer's car. Recalling that years earlier he had heard Deters speak on a radio program and had liked his demeanor, Clinton called Deters Law to schedule a consultation. On September 22, 2017, Clinton and his wife, Jillian, met with Chuck Holbrook, an investigator employed by the firm.

Clinton signed a contingent-fee contract, agreeing to pay the firm one-third of the gross recovery in his personal-injury case.

{¶ 7} In early October, Stephanie Collins, an attorney with Deters Law, informed the Pangallos that she would be handling their case. Collins left Deters Law the following month and informed the Pangallos that Dominick Romeo would be their attorney going forward. They later learned that Romeo was not licensed in Ohio.

{¶ 8} On January 28, 2018, Clinton emailed Romeo to terminate the firm's representation. Deters emailed Jillian several times that night and asked to meet with her and Clinton in an effort to persuade them to stay with the firm. In those emails, he stated, "I can make sure everything is not only done right. But over the top." He also claimed, "We have a whole gang on cases. Ky. Ohio. Lawyers. Staff. Records requesters. Paralegals. Me. I just want to grab file tomorrow. See what has been done. And talk. * * * If we have droppedball [sic] I swear. I'll tell you we have."

{¶ 9} The next day, the Pangallos met with Deters and Holbrook. No attorney was present. During Deters's panel hearing, the Pangallos and Deters offered differing accounts of what had transpired at the meeting.

{¶ 10} The Pangallos testified that they did not know that Deters was not licensed to practice law when they met him, that he never said that he was or was not an attorney, and that they therefore assumed he was an attorney.[1] Jillian stated that Deters referred to himself by his nickname, "The Bulldog,"—a moniker that he has long used on the radio and in social media—and told them that he would take care of things and get things done. In addition to discussing the value of their case, the Pangallos recalled, Deters advised them about the

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1. The board found that Jillian knew that Deters was not a lawyer, at least not an Ohio lawyer, prior to the January 29 meeting, but the testimony it cites to support that finding shows only that Dominick Romeo had informed Jillian that Romeo was not licensed in Ohio and that the firm did not have an Ohio-licensed personal-injury attorney at that time.

"stacking" of insurance policies, the differences between Ohio and Kentucky law on that issue, and how those differences could affect their recovery. Both Jillian and Clinton testified that Deters advised them to file a claim against Clinton's employer because it had higher insurance limits—and that he called their refusal to do so "stupid."

{¶ 11} Deters admitted that he gave the Pangallos his opinion regarding the value of their case based on his experience as an attorney and that they discussed the possibility that Clinton might be entitled to an award equal to the tortfeasor's policy limits. He also admitted that they discussed the possibility of pursuing a recovery from Clinton's employer—though he denied giving the Pangallos any advice on that issue and claimed that the issue of stacking insurance policies "never came up" in their discussions.

{¶ 12} Deters also testified that after the Pangallos told him that they were experiencing financial difficulties, he offered to arrange a presettlement loan through Barrister Capital and told them how the loan would work. According to the Pangallos, Deters advised them that the repayment of the loan would be contingent on winning their case and that they would not have to pay much interest, because their case would be settled within one month. They testified—and Deters acknowledged—that they relied on that advice in deciding to accept the loan.

{¶ 13} By the time the meeting ended, Deters (purportedly with his father's approval) had agreed to reduce the Pangallos' contingent fee to 28 percent of their recovery and the Pangallos had agreed to allow Deters Law to continue representing them.

{¶ 14} After the meeting, the Pangallos obtained a $3,000 loan from Barrister Capital. Jillian and Deters exchanged several emails discussing Clinton's medical treatment and the efforts being made to determine the limits of

the tortfeasor's insurance policy. Deters opined that an insurer's refusal to state the limits of its policy "usually means high limits."

{¶ 15} On April 24, 2018, Jillian emailed a letter from Clinton to Deters terminating the firm's representation. In an emailed response, Deters asserted that he had not "handled" the Pangallos' case and identified three other lawyers who had purportedly worked on the case. However, Jillian testified that she had never heard of two of those attorneys and that the third attorney had told her that he was not working on her case. She also testified that shortly after she received that email, Deters called to tell her that she and Clinton would still owe the full contingent fee to Deters Law on top of any fee they paid to a new attorney—which she understood to mean that they would owe Deters Law the full contingent fee in addition to any fee they would owe their new attorney.

{¶ 16} As of January 2020, Clinton's case had not settled and the amount the Pangallos owed on their $3,000 loan had increased to more than $10,000.

The Board Found that Deters Engaged in the Unauthorized Practice of Law

{¶ 17} The board found that Deters engaged in four instances of the unauthorized practice of law by (1) giving the Pangallos his opinion regarding the value of their personal-injury case, (2) advising them about the practice of stacking insurance policies and recommending that they sue Clinton's employer, (3) giving them his analysis of how quickly their case would settle, and (4) advising them that Deters Law would exert a lien for the full contingent fee on their final settlement if they terminated the firm's representation.

Deters's Objections to the Board's Findings

{¶ 18} Deters objects to the board's findings that he engaged in the unauthorized practice of law by giving legal advice to the Pangallos. Although he has admitted that he made some of the statements that the board found to constitute the unauthorized practice of law, he characterizes his actions with regard to most of those statements as "passing on information" and steadfastly

maintains that he did not provide legal services or render legal advice to the Pangallos. In fact, he asserts that any staff member of a law firm could make the statements he made to the Pangallos without committing the unauthorized practice of law and that trial consultants, paralegals, and other law-firm staff engage in this type of conduct every day. For the reasons that follow, we find that Deters's objections are without merit.

Deters Engaged in the Unauthorized Practice of Law

{¶ 19} This court has original jurisdiction over the admission to the practice of law in Ohio, the discipline of persons so admitted, and "all other matters relating to the practice of law," Article IV, Section 2(B)(1)(g), Ohio Constitution, which includes the regulation of the unauthorized practice of law, *Greenspan v. Third Fed. S. & L. Assn.*, 122 Ohio St.3d 455, 2009-Ohio-3508, 912 N.E.2d 567, ¶ 16. The purpose of that regulation is to "protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation." *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.

{¶ 20} We have defined the unauthorized practice of law to include both the "[h]olding out to the public or otherwise representing oneself as authorized to practice law in Ohio" and the "rendering of legal services for another" by any person who is not authorized to practice law under our rules. Gov.Bar R. VII(2)(A)(1) and (4). We have held, "The practice of law is not restricted to appearances in court; it also encompasses giving legal advice and counsel." *Cincinnati Bar Assn. v. Telford*, 85 Ohio St.3d 111, 112, 707 N.E.2d 462 (1999), citing *Cleveland Bar Assn. v. Misch*, 82 Ohio St.3d 256, 259, 695 N.E.2d 244 (1998).

{¶ 21} One key element of the practice of law is the tailoring of legal advice to the needs of a specific person. *See, e.g.*, *Green v. Huntington Natl. Bank*, 4 Ohio St.2d 78, 80, 212 N.E.2d 585 (1965) (holding that giving specific

legal information in relation to the specific facts of a particular person's case for the purpose of obtaining a more beneficial condition "represent[s] the giving of legal advice"); *Disciplinary Counsel v. Palmer*, 115 Ohio Misc.2d 70, 74, 761 N.E.2d 716 (Bd.Unauth.Prac.2001) (dismissing an unauthorized-practice-of-law complaint filed against a layman who published general legal advice or opinions on a website, because there was insufficient evidence to establish that he gave legal advice customized to the particularized needs of any individual).

{¶ 22} In this case, relator has proved by a preponderance of the evidence that Deters offered the Pangallos legal advice and counsel tailored to the specific facts and circumstances of their case.

{¶ 23} First, Deters gave the Pangallos his own opinion of the value of their case and how long it would take to settle. Deters argues that stating the value of a case does not constitute legal advice, because trial consultants make a living by offering the same kinds of opinions. But, as the board noted, a trial consultant gives an opinion regarding the value of a case to a lawyer—not the client. The lawyer then takes that opinion, applies the lawyer's own knowledge and experience, and chooses which parts of the consultant's opinion—if any—to incorporate into the lawyer's own advice to the client.

{¶ 24} Deters did not convey his opinion to an attorney assigned to the Pangallos' case, nor did he relay the opinion of the Pangallos' attorney to them. Instead, he told them what *he thought* the case was worth based on his years of experience as a lawyer. At the time that he gave them that legal advice, it had been more than three years since he had been licensed to practice law in Ohio.

{¶ 25} Second, according to the Pangallos, Deters informed them that the practice of stacking insurance policies is permitted under Kentucky law but not under Ohio law. He also recommended that the Pangallos sue Clinton's employer in addition to suing the tortfeasor, in an effort to increase their potential recovery. Although Deters generally denied that he had said these things, the hearing panel

found that the Pangallos' testimony was more credible. We defer to that determination because the panel members saw and heard the witnesses firsthand and the record does not weigh heavily against it. *See, e.g.*, *Cuyahoga Cty. Bar Assn. v. Wise*, 108 Ohio St.3d 164, 2006-Ohio-550, 842 N.E.2d 35, ¶ 24.

{¶ 26} Third, Deters gave the Pangallos general information about how a presettlement loan works, assured them that their case would settle within one month considering the facts of the matter, and explained that a quick settlement would limit the amount of interest they would have to pay for the loan. Although giving a general explanation of how such a loan works does not amount to giving legal advice, Deters's providing the Pangallos with his analysis of the facts of their case, his assessment of the timeline for settlement, and his opinion regarding the anticipated length of the loan all constituted giving legal advice. And both of the Pangallos testified—and Deters admitted—that they relied on Deters's advice in deciding to accept the presettlement loan.

{¶ 27} Finally, when the Pangallos informed Deters that they were terminating his law firm's representation, Deters gave them the erroneous legal advice that the firm would still be entitled to its entire contracted fee.

{¶ 28} Although Deters asserts that paralegals and other law-firm employees engage in this type of conduct every day, his speculative argument—even if true—is not a valid defense to the charge of the unauthorized practice of law. Laymen may assist lawyers in preparing legal documents and managing pending client matters, but their activities must be carefully supervised and approved by a licensed practitioner. *Columbus Bar Assn. v. Thomas*, 109 Ohio St.3d 89, 2006-Ohio-1930, 846 N.E.2d 31, ¶ 14. "A paralegal who, without the supervision of an attorney, advises and represents a claimant in a personal injury matter is engaged in the unauthorized practice of law." *Columbus Bar Assn. v. Purnell*, 94 Ohio St.3d 126, 760 N.E.2d 817 (2002), citing *Cincinnati Bar Assn. v. Cromwell*, 82 Ohio St.3d 255, 695 N.E.2d 243 (1998).

{¶ 29} Deters suggested that four different attorneys worked on the Pangallos' case after Collins left the firm. However, the Pangallos had never heard of two of those attorneys and one had told Jillian that he was not working on the case. The fourth attorney, Romeo, was the only attorney who appears to have had any communication with the Pangallos following Collins's departure. But he was not licensed in Ohio. In short, there is no evidence that any Ohio-licensed attorney was assigned to the Pangallos' case after Collins left the firm. And the only evidence that there was *any* attorney supervision of Deters was (1) his own testimony that his father approved the reduction of the Pangallos' contingent fee and (2) the response he sent to Jillian—just two minutes after she emailed him to inquire about the availability of other insurance coverage for Clinton's accident—claiming, "Lawyers here confirmed. Only policy can seek liability coverage on is the car that hit you."

{¶ 30} Although Deters was not charged with engaging in the unauthorized practice of law by holding himself out as an attorney, it appears that that is exactly what he did. Though he never went so far as to affirmatively state that he was an attorney, he made no effort to clarify to the Pangallos his role in the firm or to inform them that he was no longer licensed to practice law in Ohio or any other jurisdiction. Instead, as a representative of a firm that bore his surname, he met with the Pangallos outside the presence of any attorney, referred to himself as "The Bulldog," and urged them to have confidence in him personally, even though he was not licensed to represent them. Furthermore, he gave them legal advice based on his own legal knowledge and years of experience that was tailored to the facts of their particular case. Simply stated, his actions were not those of a paralegal conveying general information or relaying case-specific information under the supervision of an attorney—they were the actions of a nonlawyer engaging in the practice of law.

{¶ 31} On these facts, we overrule Deters's objections and accept the board's findings that Deters engaged in the unauthorized practice of law by giving legal advice to the Pangallos. Because we find that that legal advice was, for the most part, given in a single conversation, we find that it constitutes a single instance of the unauthorized practice of law.

An Injunction and Civil Penalty Are Warranted

{¶ 32} Having found that Deters engaged in the unauthorized practice of law, the board recommends that we permanently enjoin him from engaging in further acts of the unauthorized practice of law in Ohio.

{¶ 33} The panel recommended that we impose a civil penalty of $6,500 for the four instances of the unauthorized practice of law that it found ($1,500 for each of the first three violations and $2,000 for his final violation), but the board recommends that that penalty be doubled to $13,000.

{¶ 34} In determining the appropriate sanction, Gov.Bar R. VII(8)(B) instructs us to consider (1) the degree of the respondent's cooperation during the investigation, (2) the number of times the respondent engaged in the unauthorized practice of law, (3) the flagrancy of the respondent's violations, (4) any harm that the violations caused to third parties, and (5) any other relevant factors, which may include the aggravating and mitigating circumstances identified in UPL Reg. 400(F). *See also Disciplinary Counsel v. Ward*, 155 Ohio St.3d 488, 2018-Ohio-5083, 122 N.E.3d 168, ¶ 13.

{¶ 35} Deters fully cooperated with relator's investigation, though the board noted that his cooperation declined somewhat after relator filed his complaint. And although the board found four instances of the unauthorized practice of law, we have found that Deters engaged in a single offense. While that offense was flagrant, it does not appear that the Pangallos have suffered any lasting harm as a result of Deters's misconduct. Indeed, there is no evidence that

Deters delayed their case or that they had any alternative but to accept the recommended loan to alleviate their acute financial distress.

{¶ 36} Ultimately, we are most troubled by Deters's struggle to accept his diminished role in the legal profession following his Kentucky suspension and his Ohio retirement. That struggle was evident at the panel hearing when he testified, "You know, I'm a litigator," nearly six years after he was last licensed to practice law in any jurisdiction. We believe that the imposition of an injunction and a $6,500 civil penalty will serve as an appropriate deterrent to future acts of the unauthorized practice of law.

Conclusion

{¶ 37} Accordingly, we permanently enjoin Eric C. Deters from engaging in acts constituting the unauthorized practice of law in Ohio. We also order Deters to pay a civil penalty of $6,500 for his single offense of the unauthorized practice of law. Costs are taxed to Deters.

Judgment accordingly.

DEWINE, DONNELLY, and STEWART, JJ., concur.

O'CONNOR, C.J., concurs, with an opinion joined by FISCHER, J. (except that he would impose a $13,000 penalty) and BRUNNER, J.

KENNEDY, J., concurs in judgment only, with an opinion.

O'CONNOR, C.J., concurring.

{¶ 38} I fully concur in the majority's reasoning and judgment, but I write separately to respond to the suggestion in the concurring-in-judgment-only opinion that we should apply an unnecessary "professional-judgment" standard when determining whether a nonlawyer has engaged in the unauthorized practice of law. Adopting the standard proposed by the concurring-in-judgment-only opinion would not provide clarity in this area of the law and would be potentially harmful.

{¶ 39} The concurring-in-judgment-only opinion cites a litany of foreign cases and law-review articles for the uncontroversial proclamation that there is no universally accepted definition of "practice of law." Indeed, rather than attempting the impossible—enunciating an inclusive list of activities that constitute the practice of law—we have broadly defined the "unauthorized practice of law" by rule as the "rendering of legal services for another by any person not admitted to practice [law] in Ohio." Gov.Bar R. VII(2)(A)(1). The practice of law includes providing legal advice and counsel to clients. *Land Title Abstract & Trust Co. v. Dworken*, 129 Ohio St.23, 28, 193 N.E. 650 (1934). And as the majority opinion notes, we have recognized that a key element of practicing law is tailoring that advice to the needs of a specific person. Majority opinion at ¶ 21, citing *Green v. Huntington Natl. Bank*, 4 Ohio St.2d 78, 80, 212 N.E.2d 585 (1965). The concurring-in-judgment-only opinion, however, suggests that more is needed.

{¶ 40} The concurring-in-judgment-only opinion feigns concern that this court will overstep its bounds and find the unauthorized practice of law anytime a nonlawyer shares general legal knowledge that the person has acquired while going through life. Under that guise, it suggests that this court clarify for the public and the bar that a layperson who gives tailored legal advice to another engages in the unauthorized practice of law only when the layperson "exercise[s] professional judgment" in doing so. Opinion concurring in judgment only at ¶ 47. Not only does the concurring-in-judgment-only opinion's description of the proposed professional-judgment standard fail to clarify the contours of the practice of law, but its attempt to clarify the meaning of "practice of law" is wholly unwarranted in this case, because this case involves conduct that the members of this court unanimously agree constitutes the unauthorized practice of law.

{¶ 41} This court has exclusive jurisdiction to regulate the unauthorized practice of law, *Toledo Bar Assn. v. VanLandingham*, 143 Ohio St.3d 328, 2015-Ohio-1622, 37 N.E.3d 1195, ¶ 5, and we undertake that task in a common-sense manner for the purpose of protecting the public, *Henize v. Giles*, 22 Ohio St.3d 213, 218, 490 N.E.2d 585 (1986), citing *Cowern v. Nelson*, 207 Minn. 642, 647, 290 N.W. 795 (1940). Common sense demands consideration of context when determining whether particular conduct constitutes the practice of law. *See Henize* at 219 (allowing lay representation in the "limited setting" of an administrative hearing before the Unemployment Compensation Board of Review).

{¶ 42} The relevant context here includes Deters's background (his education and legal experience) and the circumstances under which he gave advice to Clinton and Jillian Pangallo (as a representative of Deters & Associates, P.S.C. while it was engaged to provide legal representation to the Pangallos). Although Deters is not licensed to practice law in Ohio, he is not a "layperson," as that word is commonly understood. *See* https://dictionary.cambridge.org/us/dictionary/english/layperson (accessed July 13, 2021) [https://perma.cc/C9KD-VDSB] (defining "layperson" as "someone who is not an expert in or does not have a detailed knowledge of a particular subject"). It cannot be said that Deters lacks detailed knowledge of the law. He successfully completed the formal legal education required to obtain admission to the bar, and he practiced law in Ohio for more than 25 years before resigning his license. Resignation of his Ohio law license and suspension of his Kentucky law license surely did not eradicate his legal acumen.

{¶ 43} Also part of the relevant context here is that Deters continues to work for the law firm that bears his surname, purportedly as office manager and client liaison. In that capacity, Deters met with the Pangallos and discussed their legal needs outside the presence of a licensed lawyer. When the Pangallos

attempted to terminate their relationship with the law firm, it was Deters—not one of the licensed attorneys who were supposedly responsible for their case—who responded and, at least initially, persuaded them to remain clients of the firm. His advice to the Pangallos—including his opinions on whom they should sue, the value of their case, how long it would take to settle their case, and the viability of stacking insurance policies in Kentucky and Ohio—was given in the context of the firm's legal representation of the Pangallos, was based on Deters's own legal experience, and was tailored to the Pangallos' legal needs. When Deters's conduct is viewed in this context, it is clear that this is not a case about a layperson who has innocently shared passively acquired knowledge of the law—the type of conduct the concurring-in-judgment-only opinion purportedly seeks to safeguard.

{¶ 44} Moreover, adoption of a professional-judgment standard would afford no more clarity with respect to the bounds of the practice of law than our existing precedent, which holds that a person engages in the practice of law when the person provides legal advice that is specifically tailored to another person's particular needs, *Green*, 4 Ohio St.2d at 80, 212 N.E.2d 585. In most cases, giving such legal advice will satisfy the concurring-in-judgment-only opinion's proposed requirement that to engage in the unauthorized practice of law, a nonlawyer must determine the issues and apply to them the nonlawyer's knowledge of the law. And the concurring-in-judgment-only opinion cites no example of this court's finding the unauthorized practice of law based on a nonlawyer's merely providing "general legal information and advice," opinion concurring in judgment only at ¶ 58. In fact, the Board of Commissioners on the Unauthorized Practice of Law has dismissed complaints alleging violations for such conduct. *See Disciplinary Counsel v. Palmer*, 115 Ohio Misc.2d 70, 74, 761 N.E.2d 716 (Bd.Unauth.Prac.2001) ("publication of general legal advice * * * is not of itself the unauthorized practice of law").

{¶ 45} Not only is the concurring-in-judgment-only opinion's proposed professional-judgment standard unclear, but, if this court were to adopt the standard as it is described in that opinion, we would unjustifiably limit the pool of people subject to censure for the unauthorized practice of law. The opinion states that "exercising professional judgment ' "require[s] more than the most elementary knowledge of the law, or more than that which [a layperson] may be deemed to possess." ' " (Brackets added in opinion concurring in judgment only.) Opinion concurring in judgment only at ¶ 52, quoting *Lukas v. Montgomery Cty. Bar Assn.*, 35 Md. App. 442. 448, 371 A.2d 669 (1977), quoting Annotation, *What Amounts to Practice of Law*, 111 A.L.R. 19, 24-25 (1937). Were we to adopt that standard, at what point would a nonlawyer's knowledge of the law tip the scale such that he or she would be deemed to possess enough legal knowledge to be able to exercise professional judgment and thus able to engage in the unauthorized practice of law? The proposed standard would insulate people from the prohibition on the unauthorized practice of law simply because they lack a sufficient but undefined quantum of legal training. Deters had a formal legal education and decades of experience as a practicing lawyer before he surrendered his license, but those requirements cannot be prerequisites to engaging in the unauthorized practice of law if we are to fulfill our objective of "protect[ing] the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation," *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.

{¶ 46} Despite its stated goal of providing additional guidance to the public and the bar, the concurring-in-judgment-only opinion does not clarify the bounds of the practice of law, and its proposed standard would limit the pool of people subject to censure for the unauthorized practice of law. I cannot agree that

such a limitation is in the public interest. For these reasons, I fully concur in the majority opinion.

FISCHER, J., concurs in the foregoing opinion except that he would impose a $13,000 penalty.

BRUNNER, J., concurs in the foregoing opinion.

KENNEDY, J., concurring in judgment only.

{¶ 47} I concur in the judgment of the majority but write separately to assert that the focus of our inquiry in matters in which a layperson, that is, a person who lacks a valid Ohio law license, is charged with engaging in the unauthorized practice of law by providing legal advice to others should be on whether the person exercised professional judgment in giving the legal advice. Most people acquire some legal knowledge throughout their lives, but in general, they are not engaging in the unauthorized practice of law if they share this information with others. Rather, it should be only if the layperson has exercised professional judgment about a specific legal issue that they should be found to have engaged in the unauthorized practice of law. When respondent Eric Deters's behavior is viewed through this lens, he engaged in the unauthorized practice of law when he gave Jillian and Clinton Pangallo advice about their legal issues that drew upon his professional knowledge and judgment.

{¶ 48} There is no universally accepted definition of "the practice of law." Buhai, *Act Like a Lawyer, Be Judged Like a Lawyer: the Standard of Care for the Unlicensed Practice of Law*, 2007 Utah L.Rev. 87, 94. And formulating a comprehensive definition has proved to be elusive. *See In re Opinion No. 26 of Commt. on the Unauthorized Practice of Law*, 139 N.J. 323, 341, 654 A.2d 1344 (1995), quoting *Auerbacher v. Wood*, 142 N.J.Eq. 484, 485, 59 A.2d 863 (E.&A.1948) (" 'What constitutes the practice of law does not lend itself to precise and all inclusive definition' "); *Utah State Bar v. Summerhayes &*

Hayden, Pub. Adjusters, 905 P.2d 867, 869 (Utah 1995) (noting that it is "difficult to define precisely" the practice of law); *State ex rel. Frieson v. Isner*, 168 W.Va. 758, 767, 285 S.E.2d 641 (1981), fn. 2 ("Arriving at a concise definition of what constitutes the practice of law has proven difficult for most courts"); *Washington State Bar Assn. v. Great W. Union Fed. S. & L. Assn.*, 91 Wash.2d 48, 54, 586 P.2d 870 (1978) ("The 'practice of law' does not lend itself easily to precise definition"); Michigan *State Bar v. Cramer*, 399 Mich. 116, 133, 249 N.W.2d 1 (1976), quoting *Grand Rapids Bar Assn. v. Denkema*, 290 Mich. 56, 64, 287 N.W. 377 (1939) ("any attempt to formulate a lasting, all encompassing definition of 'practice of law' is doomed to failure 'for the reason that under our system of jurisprudence such practice must necessarily change with the everchanging business and social order' "); *Denver Bar Assn. v. Pub. Util. Comm.*, 154 Colo. 273, 279, 391 P.2d 467 (1964) ("There is no wholly satisfactory definition as to what constitutes the practice of law").

{¶ 49} The reason it is so difficult to formulate a universal definition for "the practice of law" is that " '[l]aw permeates so many aspects of [our] personal lives and commercial affairs that * * * most individuals, whether or not they are lawyers, are knowingly or unknowingly encountering and interpreting laws on a daily basis * * *.' " (Brackets and ellipses sic.) Zurek, *The Limited Power of the Bar to Protect Its Monopoly*, 3 St. Mary's J. Legal Mal. & Ethics 242, 248-249 (2013), quoting Luppino, *Multidisciplinary Business Planning Firms: Expanding the Regulatory Tent Without Creating a Circus*, 35 Seton Hall L.Rev. 109, 131 (2004). As stated by one of our sister supreme courts:

> The practice of law is not subject to precise definition. It is not confined to litigation but often encompasses "legal activities in many non-litigious fields which entail specialized knowledge and ability." Therefore, the line between permissible business and

> professional activities and the unauthorized practice of law is often blurred.

In re Opinion No. 24 of Commt. on Unauthorized Practice of Law, 128 N.J. 114, 122, 607 A.2d 962 (1992), quoting *In re Application of the New Jersey Soc. of Certified Pub. Accountants*, 102 N.J. 231, 236, 507 A.2d 711 (1986).

{¶ 50} We have fared no better. This court has never provided an all-inclusive definition for "the practice of law." Rather, we have enunciated broad, general statements as to what constitutes the practice of law, such as, "all advice to clients and all action taken for them in matters connected with the law," *Land Title Abstract & Trust Co. v. Dworken*, 129 Ohio St. 23, 193 N.E. 650 (1934), paragraph one of the syllabus, and "the practice of law is not limited to appearances in court, but also includes giving legal advice and counsel," *Cleveland Bar Assn. v. Misch*, 82 Ohio St.3d 256, 259, 695 N.E.2d 244 (1998). And our definition of what constitutes the unauthorized practice of law is just as broad. Gov.Bar R. VII(2)(A)(1) states that, with six noted exceptions, the unauthorized practice of law is the "rendering of legal service for another by any person not admitted to practice in Ohio."

{¶ 51} In this matter, the majority finds that Deters crossed the line into the unauthorized practice when he gave legal advice that was tailored to the needs of the Pangallos. But is this truly when the line was crossed? As the Pennsylvania Supreme Court has recognized, there are times when laypersons have the knowledge "to appreciate the legal problems and consequences involved in a given situation and the factors which should influence necessary decisions." *Dauphin Cty. Bar Assn. v. Mazzacaro*, 465 Pa. 545, 553, 351 A.2d 229 (1976). And in those situations, the advice given by the layperson is not of such a nature so as to violate the policies supporting regulation of the unauthorized practice of law. *See id.* ("No public interest would be advanced by requiring these lay

judgments to be made exclusively by lawyers"). And the giving of advice in those situations is not seen as the practice of law, because in those situations, it is recognized that the relationship between the person giving the advice and the person receiving the advice "is not based on the reasonable expectation that learned and authorized professional legal advice is being given," Commentary to D.C. Ct. App.R. 49(b)(2) (the rule defining "practice of law"). In other words, the layperson did not exercise professional judgment.

{¶ 52} "[P]rofessional judgment lies at the core of the practice of law." *Iowa State Bar Assn. Commt. on Professional Ethics & Conduct v. Baker*, 492 N.W.2d 695, 701 (Iowa 1992). And exercising professional judgment " 'require[s] more than the most elementary knowledge of the law, or more than that which [a layperson] may be deemed to possess,' " *Lukas v. Montgomery Cty. Bar Assn.*, 35 Md.App. 442, 448, 371 A.2d 669 (1977), quoting Annotation, *What Amounts to Practice of Law*, 111 A.L.R. 19, 24-25 (1937). Moreover, exercising professional judgment is an art that requires "lawyers [to] determine what the issues are and use their knowledge of the law to solve them in an ethical way." *Baker* at 701. Professional judgment is called for when an opinion is given that "requires the abstract understanding of legal principles and a refined skill for their concrete application." *Dauphin* at 553. Laypersons, in contrast, use their legal knowledge "for informational purposes alone." *Baker* at 701. Permitting only lawyers to act in matters requiring professional judgment best serves the public interest, *Bergantzel v. Mlynarik*, 619 N.W.2d 309, 312-313 (Iowa 2000), whereas permitting only lawyers to express lay judgments would not advance a public interest, *Dauphin* at 553.

{¶ 53} Therefore, we should not end our inquiry with whether the layperson tailored legal advice to the needs of a specific person. Rather, we should ask whether in doing so the layperson exercised professional judgment.

{¶ 54} Using the issue Deters confronted in this case as an example, a layperson with an elementary knowledge of the law could have advised the Pangallos that they had a personal-injury claim against the driver of the automobile who rear-ended Clint and should pursue legal action. In offering that advice, the layperson would have provided legal advice tailored to the needs of the Pangallos. And it is likely that these types of conversations happen all over the country on a daily basis. But in imparting this advice, the layperson has not exercised professional judgment and therefore has not engaged in the practice of law. Unlike Deters, the layperson in the example did not give advice as to the types of claims the Pangallos could assert: personal injury, property damage, lost wages, and loss of consortium; the layperson did not provide a monetary figure for what the claims were worth; and the layperson did not discuss other potential insurance policies that may provide coverage and the manner in which different jurisdictions may handle multiple-insurance-policy coverage. Providing advice on those topics requires "the abstract understanding of legal principles and a refined skill for their concrete application," *Dauphin,* 465 Pa. at 553, 351 A.2d 229.

{¶ 55} Deters argues that his advising the Pangallos was no different from what paralegals and legal staff in law offices do every day across Ohio and the country. Deters is wrong. He was not providing legal advice at the direction of an attorney, which is what paralegals are permitted to do. *See Columbus Bar Assn. v. Purnell*, 94 Ohio St.3d 126, 760 N.E.2d 817 (2002) ("A paralegal who, without the supervision of an attorney, advises and represents a claimant in a personal injury matter is engaged in the unauthorized practice of law").

{¶ 56} Instead, he drew on *his* legal knowledge and judgment from his years as an attorney and provided *his* legal advice to the Pangallos about their case. Deters met with the Pangallos, learned the facts of their case, drew on his knowledge of the law, determined what issues the Pangallos faced in pursuing

their claims, and provided solutions for them. He not only informed them of the ability to pursue a claim against Clinton's employer, as Clinton was driving a company car, but also explained the rationale for pursuing such a claim—higher insurance limits. He also explained the legal concept of stacking insurance policies and how Ohio and Kentucky law differed. Deters's legal knowledge was neither elementary nor used for informational purposes alone. Rather, he was exercising professional judgment when he tailored the legal advice to the legal needs of the Pangallos.

{¶ 57} Deters also utilized his professional judgment when he provided a valuation of the Pangallos' claims that was based on his former experiences as a lawyer. To value the claim, Deters needed to determine the legal liability involved, the legal rights of the Pangallos, and what damages were legally compensable. *See Green v. Unauthorized Practice of Law Commt.*, 883 S.W.2d 293, 298 (Tex.App.1994) (layperson engaged in the unauthorized practice of law by determining clients' legally compensable damages). This advice was also not elementary or informational. Deters drew on his years of experience as a practicing lawyer to provide solutions for legal questions that required the application of a trained legal mind.

{¶ 58} While "the amorphous nature of the practice of law * * * makes inquiries into unauthorized practice principles * * * challenging," Lanctot, *Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law*, 30 Hofstra L.Rev. 811 (2002), we must strive to provide as much guidance as possible to the bar and the public. By providing guidance, we will not only advance the purpose of protecting the public from the unauthorized practice of law, *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40, but also "facilitat[e] consumer choice and enhanc[e] access to justice." Rhode & Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82

Fordham L.Rev. 2587, 2608 (2014). And by narrowing our focus in cases in which a layperson has provided legal advice to determining whether the layperson exercised professional judgment or merely provided general legal information and advice, we will provide greater direction to the bar and public.

Therefore, I concur in judgment only.

Joseph M. Caligiuri, Disciplinary Counsel, for relator.

Eric C. Deters, pro se.

OHIO RULES OF PROFESSIONAL CONDUCT

(Effective February 1, 2007; as amended effective June 17, 2020)

TABLE OF CONTENTS

	Preamble: A Lawyer's Responsibilities; Scope	1
1.0	Terminology	5

Client-Lawyer Relationship

1.1	Competence	11
1.2	Scope of Representation and Allocation of Authority Between Client and Lawyer	14
1.3	Diligence	18
1.4	Communication	20
1.5	Fees and Expenses	24
1.6	Confidentiality of Information	31
1.7	Conflict of Interest: Current Clients	39
1.8	Conflict of Interest: Current Clients: Specific Rules	50
1.9	Duties to Former Clients	61
1.10	Imputation of Conflicts of Interest: General Rule	65
1.11	Special Conflicts of Interest for Former and Current Government Officers and Employees	70
1.12	Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral	74
1.13	Organization as Client	77
1.14	Client with Diminished Capacity	82
1.15	Safekeeping Funds and Property	86
1.16	Declining or Terminating Representation	92
1.17	Sale of Law Practice	96
1.18	Duties to Prospective Client	102

Counselor

2.1	Advisor	105
2.2	[Reserved for future use; no corresponding ABA Model Rule]	
2.3	Evaluation for Use by Third Persons	107
2.4	Lawyer Serving as Arbitrator, Mediator, or Third-Party Neutral	110

Advocate

3.1	Meritorious Claims and Contentions	112
3.2	Expediting Litigation [Not Adopted; See Note]	113
3.3	Candor toward the Tribunal	114
3.4	Fairness to Opposing Party and Counsel	119
3.5	Impartiality and Decorum of the Tribunal	121
3.6	Trial Publicity	124

3.7 Lawyer as Witness 127
3.8 Special Responsibilities of a Prosecutor 130
3.9 Advocate in Nonadjudicative Proceedings 132

Transactions with Persons Other Than Clients

4.1 Truthfulness in Statements to Others 133
4.2 Communication with Person Represented by Counsel 135
4.3 Dealing with Unrepresented Person 137
4.4 Respect for Rights of Third Persons 139

Law Firms and Associations

5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers 141
5.2 Responsibilities of a Subordinate Lawyer 143
5.3 Responsibilities Regarding Nonlawyer Assistants 144
5.4 Professional Independence of a Lawyer 146
5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law; Remote Practice of Law 148
5.6 Restrictions on Right to Practice 154
5.7 Responsibilities Regarding Law-Related Services 155

Public Service

6.1 Voluntary Pro Bono Publico Service [Action Deferred; See Note] 159
6.2 Accepting Appointments 160
6.3 Membership in Legal Services Organization [Not Adopted; See Note] 161
6.4 Law Reform Activities Affecting Client Interests [Not Adopted; See Note] 162
6.5 Nonprofit and Court-Annexed Limited Legal Services Programs 163

Information About Legal Services

7.1 Communications Concerning a Lawyer's Services 165
7.2 Advertising and Recommendation of Professional Employment 167
7.3 Solicitation of Clients 170
7.4 Communication of Fields of Practice and Specialization 176
7.5 Firm Names and Letterheads 178
7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges [Not Adopted; See Note] 180

Maintaining the Integrity of the Profession

8.1 Bar Admission and Disciplinary Matters 181
8.2 Judicial Officials 183
8.3 Reporting Professional Misconduct 185
8.4 Misconduct 187
8.5 Disciplinary Authority; Choice of Law 189

Form of Citation, Effective Date, and Application 192

Note: Except for Latin terms, words and phrases that appear in italicized type in each rule denote terms that are defined in Rule 1.0.

RULE 1.0: TERMINOLOGY

As used in these rules:

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

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See division (f) 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 private or public legal aid or public defender organization, a legal services organization, or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that has an intent to deceive and is either of the following:

(1) an actual or implied misrepresentation of a material fact that is made either with knowledge of its falsity or with such utter disregard and recklessness about its falsity that knowledge may be inferred;

(2) a knowing concealment of a material fact where there is a duty to disclose the material fact.

(e) "Illegal" denotes criminal conduct or a violation of an applicable statute or administrative regulation.

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

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

(h) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

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

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

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

(l) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely 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.

(m) "Substantial" when used in reference to degree or extent denotes a matter of real importance or great consequence.

(n) "Substantially related matter" denotes one that involves the same transaction or legal dispute or one in which there is a substantial risk that confidential factual information that would normally have been obtained in the prior representation of a client would materially advance the position of another client in a subsequent matter.

(o) "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.

(p) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and electronic communications. 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 consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within division (c) can depend on the specific facts. For example, a lawyer in an of-counsel relationship with a law firm will be treated as part of that firm. On the other hand, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm for purposes of fee division in Rule 1.5(e). The terms of any 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.

[3] With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Ohio 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.

[4A] Government agencies are not included in the definition of "firm" because there are significant differences between a government agency and a group of lawyers associated to serve nongovernmental clients. Of course, all lawyers who practice law in a government agency are subject to these rules. Moreover, some of these rules expressly impose upon lawyers associated in a government agency the same or analogous duties to those required of lawyers associated in a firm. See Rules 3.6(d), 3.7(c), 5.1(c), and 5.3. Identifying the governmental client of a lawyer in a government agency is beyond the scope of these rules.

Fraud

[5] The terms "fraud" or "fraudulent" incorporate the primary elements of common law fraud. The terms do not include 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. Under division (d)(2), the duty to disclose a material fact may arise under these rules or other Ohio law.

Informed Consent

[6] Many of the Ohio 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 1.6(a) and 1.7(b). 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. A number of rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see divisions (p) and (b). Other rules require that a client's consent be obtained in a writing signed by the client. See, *e.g.,* Rules 1.8(a) and (g). For a definition of "signed," see division (p).

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 information, including information in electronic form, 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 information, including information in electronic form, 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.

Substantial and "Substantially Related Matter"

[11] The definition of "substantial" does not extend to "substantially" as used in Rules 1.9, 1.10, 1.11, 1.12, 1.16, 1.18, and 7.4. The definition of "substantially related matter" is taken from Rule 1.9, Comment [3] and defines the term for purposes of Rules 1.9, 1.10, and 1.18. "Personally and substantially," as used in Rule 1.11, originated in 18 U.S.C. Sec. 207. Rule 1.12, Comment [1] defines "personally and substantially" for former adjudicative officers.

Comparison to former Ohio Code of Professional Responsibility

Rule 1.0 replaces and expands significantly on the Definition portion of the Code of Professional Responsibility. Rule 1.0 defines fourteen terms that are not defined in the Code and alters the Code definitions of "law firm" and "tribunal."

Comparison to ABA Model Rules of Professional Conduct

Rule 1.0 contains four substantive changes to the Model Rule terminology and revisions to the corresponding comments.

The definition in Model Rule 1.0(c) of "firm" and "law firm" is rewritten to expressly include legal aid and public defender offices. Comments [2] and [3] have been altered, and Comment [4A] has been added. Comment [2] is revised to address the status of of-counsel lawyers and practitioners who share office space. Comment [3] is amended to eliminate the reference to government lawyers. The rationale for this deletion and application of the Ohio Rules of Professional Conduct to lawyers in government practice are addressed in a new Comment [4A].

The Model Rule 1.0(d) definition of "fraud" or "fraudulent" is amended to replace the phrase "under the substantive or procedural law of the applicable jurisdiction" with the elements of fraud that have been established by Ohio law. See e.g., *Domo v. Stouffer* (1989), 64 Ohio App.3d 43, 51 and Ohio Jury Instructions, Sec. 307.03. Comment [5] is revised accordingly.

Added to Rule 1.0 is a definition of "illegal" in division (e). This definition clarifies that rules referring to "illegal or fraudulent conduct," including Rules 1.2(d), 1.6(b)(3), 1.16(b)(2), 4.1(b), and 8.4(c), apply to statutory and regulatory prohibitions that are not classified as crimes.

Model Rule 1.0(l), which defines "substantial," is relettered as Rule 1.0(m) and revised to incorporate a definition from Ohio case law. See *State v. Self* (1996), 112 Ohio App.3d 688, 693. The new definition of "substantially related" is taken from Rule 1.9, Comment [3]. A new Comment [11] is added to state that the definition of "substantial" does not extend to the term "substantially," as used in various rules, and to reference specific definitions in Rules 1.9, 1.11, and 1.12.

RULE 1.5: FEES AND EXPENSES

(a) A lawyer shall not make an agreement for, charge, or collect an *illegal* or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a *reasonable* fee. The factors to be considered in determining the reasonableness of a fee include the following:

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

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

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

(4) the amount involved and the results obtained;

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

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

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

(8) whether the fee is fixed or contingent.

(b) The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in *writing*, before or within a *reasonable* time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in *writing*.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by division (d) of this rule or other law.

(1) Each contingent fee agreement shall be in a *writing* signed by the client and the lawyer and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement shall clearly notify

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

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

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

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

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

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

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

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

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

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

(4) the total fee is *reasonable*.

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

Comment

Reasonableness of Fee

[1] Division (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in divisions (a)(1) through (8) are not exclusive. Nor will each factor be relevant in each instance.

Nature and Scope of Representation; Basis or Rate of Fee and Expenses

[2] The detail and specificity of the communication required by division (b) will depend on the nature of the client-lawyer relationship, the work to be performed, and the basis of the rate or fee. A writing that confirms the nature and scope of the client-lawyer relationship and the fees to be charged is the preferred means of communicating this information to the client and can clarify the relationship and reduce the possibility of a misunderstanding. When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be established promptly. Unless the situation involves a regularly represented client, the lawyer should furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee, and whether and to what extent the client will be responsible for any costs, expenses, or disbursements in the course of the representation. So long as the client agrees in advance, a lawyer may seek reimbursement for the reasonable cost of services performed in-house, such as copying.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of division (a) of this rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(e). 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 the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] 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.

[5A] If all funds held by the lawyer are not disbursed at the time the closing statement required by division (c)(2) is prepared, the lawyer's obligation with regard to those funds is governed by Rule 1.15.

Prohibited Contingent Fees

[6] Division (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of spousal or child support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support or other financial orders because such contracts do not implicate the same policy concerns.

Retainer

[6A] Advance fee payments are of at least four types. The "true" or "classic" retainer is a fee paid in advance solely to ensure the lawyer's availability to represent the client and precludes the lawyer from taking adverse representation. What is often called a retainer is in fact an advance payment to ensure that fees are paid when they are subsequently earned, on either a flat fee or hourly fee basis. A flat fee is a fee of a set amount for performance of agreed work, which may or may not be paid in advance but is not deemed earned until the work is performed. An earned upon receipt fee is a flat fee paid in advance that is deemed earned upon payment regardless of the amount of future work performed. When a fee is earned affects whether it must be placed in the attorney's trust account, see Rule 1.15, and may have significance under other laws such as tax and bankruptcy. The reasonableness requirement and the application of the factors in division (a) may mean that a client is entitled to a refund of an advance fee payment even though it has been denominated "nonrefundable," "earned upon receipt," or in similar terms that imply the client would never receive a refund. So that a client is not misled by the use of such terms, division (d)(3) requires certain minimum disclosures that must be included in the written fee agreement. This does not mean the client will always be entitled to a refund upon early termination of the representation [*e.g.*, factor (a)(2) might justify the entire fee], nor does it determine how any refund should be calculated (e.g., hours worked times a reasonable hourly rate, quantum meruit, percentage of the work completed, etc.), but merely requires that the client be advised of the possibility of a refund based upon application of the factors set forth in division (a). In order to be

able to demonstrate the reasonableness of the fee in the event of early termination of the representation, it is advisable that lawyers maintain contemporaneous time records for any representation undertaken on a flat fee basis.

Division of Fee

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

[8] Division (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes between a client and a lawyer, such as an arbitration or mediation procedure established by a local bar association, the Ohio State Bar Association, or the Supreme Court of Ohio, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, 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.

[10] A procedure has been established for resolution of fee disputes between lawyers who are sharing a fee pursuant to division (e) of this rule. This involves use of an arbitration or mediation procedure established by a local bar association or the Ohio State Bar Association. The lawyer must comply with the procedure. A dispute between lawyers who are splitting a fee shall not delay disbursement to the client. See Rule 1.15.

Comparison to former Ohio Code of Professional Responsibility

RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

(a) Subject to divisions (c), (d), and (e) of this rule, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if any of the following applies:

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

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

(3) the lawyer is discharged.

(b) Subject to divisions (c), (d), and (e) of this rule, a lawyer may withdraw from the representation of a client if any of the following applies:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer *reasonably believes* is *illegal* or *fraudulent*;

(3) the client has used the lawyer's services to perpetrate a crime or *fraud*;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails *substantially* to fulfill an obligation, financial or otherwise, to the lawyer regarding the lawyer's services and has been given *reasonable* warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client;

(7) the client gives *informed consent* to termination of the representation;

(8) the lawyer sells the law practice in accordance with Rule 1.17;

(9) other good cause for withdrawal exists.

(c) If permission for withdrawal from employment is required by the rules of a *tribunal*, a lawyer shall not withdraw from employment in a proceeding before that *tribunal* without its permission.

(d) As part of the termination of representation, a lawyer shall take steps, to the extent *reasonably* practicable, to protect a client's interest. The steps include giving due notice to the client, allowing *reasonable* time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules. Client papers and property shall be promptly delivered to the client. "Client papers and property" may include correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert reports, and other items *reasonably* necessary to the client's representation.

(e) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned, except when withdrawal is pursuant to Rule 1.17.

Comment

[1] A lawyer shall not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Ohio Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the discharge may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These

consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is illegal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[8A] A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances, and in a matter pending before a tribunal he must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of the client and the possibility of prejudice to the client as a result of the withdrawal. Even when the lawyer justifiably withdraws, a lawyer should protect the welfare of the client by giving due notice of the withdrawal, suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Clients receive no benefit from a lawyer keeping a copy of the file and therefore can not be charged for any copying costs. Further, the lawyer should refund to the client any compensation not earned during the employment.

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client.

Comparison to former Ohio Code of Professional Responsibility

Rule 1.16 governs withdrawal from representation and replaces DR 2-110.

Rule 1.16(a)(1) corresponds to DR 2-110(B)(1) and (2), Rule 1.16(a)(2) corresponds to DR 2-110(B)(3), and Rule 1.16(a)(3) corresponds to DR 2-110(B)(4).

Rule 1.16(b)(1) generally corresponds to DR 2-110(A)(2).

Rule 1.16(b)(2) corresponds to DR 2-110(C)(1)(b).

Rule 1.16(b)(3) corresponds to DR 2-110 (C)(1)(c).

Rule 1.16(b)(4) corresponds to DR 2-110(C)(1)(c) and (d).

Rule 1.16(b)(5) corresponds to DR 2-110(C)(1)(f).

Rule 1.16(b)(6) corresponds to DR 2-110(C)(1)(d).

Rule 1.16(b)(7) corresponds to DR 2-110(C)(5).

Rule 1.16(b)(8) corresponds to DR 2-110(C)(7).

Rule 1.16(b)(9) corresponds to DR 2-110(C)(6).

Rule 1.16(c) is identical to DR 2-110(A)(1).

Rule 1.16(d) corresponds to DR 2-110(A)(2) and also requires the withdrawing lawyer to promptly return client papers and property to the client. "Client papers and property" are defined as including correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary to the client's representation.

Rule 1.16(e) is identical to DR 2-110(A)(3) except that the reference to the sale of a law practice rule is appropriately designated as Rule 1.17.

Comparison to ABA Model Rules of Professional Conduct

Rule 1.16(b)(2) is revised to change "criminal" to "illegal." This allows the lawyer to withdraw when the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is illegal. This would include violations of statutes or administrative regulations for which there are no criminal penalties.

Rules 1.16(b)(7) and (8) are added to recognize additional circumstances in which withdrawal may be permitted.

Rule 1.16(d) is revised to include a list of items typically included in "client papers and property." This provision is further modified to require that a withdrawing lawyer must afford the client a reasonable time to secure new counsel. Comment [8A] is added to elaborate on the duties of a lawyer who is contemplating or effectuating withdrawal from representation.

RULE 1.17: SALE OF LAW PRACTICE

(a) Subject to the provisions of this rule, a lawyer or *law firm* may sell or purchase a law practice, including the good will of the practice. The law practice shall be sold in its entirety, except where a conflict of interest is present that prevents the transfer of representation of a client or class of clients. This rule shall not permit the sale or purchase of a law practice where the purchasing lawyer is buying the practice for the sole or primary purpose of reselling the practice to another lawyer or *law firm*.

(b) As used in this rule:

(1) "Purchasing lawyer" means either an individual lawyer or a *law firm*;

(2) "Selling lawyer" means an individual lawyer, a *law firm*, the estate of a deceased lawyer, or the representatives of a disabled or disappeared lawyer.

(c) The selling lawyer and the prospective purchasing lawyer may engage in general discussions regarding the possible sale of a law practice. Before the selling lawyer may provide the prospective purchasing lawyer with information relative to client representation or confidential material contained in client files, the selling lawyer shall require the prospective purchasing lawyer to execute a confidentiality agreement. The confidentiality agreement shall bind the prospective purchasing lawyer to preserve information relating to the representation of the clients of the selling lawyer, consistent with Rule 1.6, as if those clients were clients of the prospective purchasing lawyer.

(d) The selling lawyer and the purchasing lawyer may negotiate the terms of the sale of a law practice, subject to all of the following:

(1) The sale agreement shall include a statement by selling lawyer and purchasing lawyer that the purchasing lawyer is purchasing the law practice in good faith and with the intention of delivering legal services to clients of the selling lawyer and others in need of legal services.

(2) The sale agreement shall provide that the purchasing lawyer will honor any fee agreements between the selling lawyer and the clients of the selling lawyer relative to legal representation that is ongoing at the time of the sale. The purchasing lawyer may negotiate fees with clients of the selling lawyer for legal representation that is commenced after the date of the sale.

(3) The sale agreement may include terms that *reasonably* limit the ability of the selling lawyer to reenter the practice of law, including, but not limited to, the ability of the selling lawyer to reenter the practice of law for a specific period of time or to practice in a specific geographic area. The sale agreement shall not include terms limiting the ability of the selling lawyer to practice law or reenter the practice of law if the selling lawyer is selling his or her law practice to enter

academic, government, or public service or to serve as in-house counsel to a business.

(e) Prior to completing the sale, the selling lawyer and purchasing lawyer shall provide *written* notice of the sale to the clients of the selling lawyer. For purposes of this rule, clients of the selling lawyer include all current clients of the selling lawyer and any closed files that the selling lawyer and purchasing lawyer agree to make subject of the sale. The *written* notice shall include all of the following:

(1) The anticipated effective date of the proposed sale;

(2) A statement that the purchasing lawyer will honor all existing fee agreements for legal representation that is ongoing at the time of sale and that fees for legal representation commenced after the date of sale will be negotiated by the purchasing lawyer and client;

(3) The client's right to retain other counsel or take possession of case files;

(4) The fact that the client's consent to the sale will be presumed if the client does not take action or otherwise object within ninety days of the receipt of the notice;

(5) Biographical information relative to the professional qualifications of the purchasing lawyer, including but not limited to applicable information consistent with Rule 7.2, information regarding any disciplinary action taken against the purchasing lawyer, and information regarding the existence, nature, and status of any pending disciplinary complaint certified by a probable cause panel pursuant to Gov. Bar R. V, Section 11.

(f) If the seller is the estate of a deceased lawyer or the representative of a disabled or disappeared lawyer, the purchasing lawyer shall provide the *written* notice required by division (e) of this rule, and the purchasing lawyer shall obtain *written* consent from each client to act on the client's behalf. The client's consent shall be presumed if no response is received from the client within ninety days of the date the notice was sent to the client at the client's last *known* address as shown on the records of the seller or the client's rights would be prejudiced by a failure to act during the ninety day period.

(g) If a client cannot be given the notice required by division (e) of this rule, the representation of that client may be transferred to the purchaser only after the selling lawyer and purchasing lawyer have caused notice of the sale to be made by at least one publication in a newspaper of general circulation in the county in which the sale will occur or in an adjoining county if no newspaper is published in the county in which the sale will occur. Upon completion of the publication, the client's consent to the sale is presumed.

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

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

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this rule, when a lawyer or an entire firm ceases to practice, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6. A sale of a law practice is prohibited where the purchasing lawyer does not intend to engage in the practice of law but is buying the practice for the purpose of reselling the practice to another lawyer or law firm.

[2] [RESERVED]

[3] The purchasing and selling lawyer may agree to a reasonable limitation on the selling lawyer's ability to reenter the practice of law following consummation of the sale. These limitations may preclude the selling lawyer from engaging in the practice of law for a specific period of time or in a defined geographical area, or both. However, the sale agreement may not include such limitations if the selling lawyer is selling his practice to enter academic service, assume employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] [RESERVED]

[5] [RESERVED]

Sale of Entire Practice

[6] The rule requires that the seller's entire practice, be sold. This requirement protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice, subject to conflict clearance, client consent, and the purchasing lawyer's competence to assume representation in those matters. This requirement is

satisfied even if a purchaser is unable to undertake a particular client matter because of a conflict of interest or if the seller, in good faith, makes the entire practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Pursuant to Rule 1.1, the purchasing lawyer may be required to associate with other counsel in order to provide competent representation.

Client Confidences, Consent, and Notice

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

[7A] Before a sale is completed, written notice of the proposed sale must be provided to the clients of the selling lawyer whose matters are included within the scope of the proposed sale. The notice must be provided jointly by the selling and purchasing lawyers, except where the seller is the estate or representative of a deceased, disabled, or disappeared lawyer, in which case the notice is provided by the purchaser. At a minimum, the notice must include information about the proposed sale and the purchasing lawyer that will allow each client to make an informed decision regarding consent to the sale. A client may elect to opt out of the sale and seek other representation. However, consent is presumed if the client does not object or take other action within ninety days of receiving the notice of the proposed sale.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the rule requires the parties to provide notice of the proposed sale via a newspaper publication.

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser. However, the purchaser may negotiate new fee agreements with clients of the seller for representation that is undertaken after the sale is completed.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(f) for the definition of informed consent); the obligation to avoid agreements limiting a lawyer's liability to a client for malpractice (see Rule 1.8(h)); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[13] This rule applies to the sale of a law practice of a deceased, disabled, or disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to these rules. Since, however, no lawyer may participate in a sale of a law practice that does not conform to the requirements of this rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans, and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this rule.

[15] This rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

[16] The purchaser can not continue to use the seller's name unless the seller is deceased, disabled, or retired pursuant to Rule VI of the Supreme Court Rules for the Government of the Bar of Ohio.

Comparison to former Ohio Code of Professional Responsibility

Rule 1.17 restates the existing provisions of DR 2-111, substituting "information relating to the representation" in place of "confidences and secrets."

Although there is little textual similarity between Rule 1.17 and the ABA Model Rule, most of the substantive provisions of the Model Rule are incorporated into the rule, with the major exceptions being that Rule 1.17 (1) does not permit the sale of only a portion of a law practice, and (2) allows a missing client to be provided notice of the proposed sale by publication. The comments are modified to track the rule and Ohio law.

Comment [1] is modified to clearly indicate that the provisions of the rule are not intended to permit sale to a lawyer who will merely act as a "broker" and resell the practice.

Comment [2] is relocated to Comment [6] where the language of the Model Rule comment is revised to address the unanticipated return to practice of the selling lawyer. The latter modification is deemed unnecessary due to the prohibition in division (d)(3) directing that the sale agreement may not restrict the ability of the selling lawyer to reenter the practice if the sale is the result of the lawyer selling the practice "to enter academic, government, or public service or to serve as in-house counsel to a business" and the commentary contained in Comment [3].

Comments [4] and [5] are deleted, and comments [6], [9], and [15] are modified, to reflect the fact that Rule 1.17 does not permit the sale of a part of a lawyer's practice.

Comments [7] and [7A] are modified to reflect the actual mechanisms contained in the rule respecting the preservation of information related to the representation of clients.

Comment [10] is clarified to indicate that new fee arrangements may be negotiated with clients after the sale of a law practice "for representation that is undertaken after the sale is completed."

Comment [11] is modified to specifically ensure that the parties to the sale of a law practice understand that the sale may not limit the liability of either the buyer or the seller for malpractice.

Comment [16] is added to give notice to prospective purchasers that it is improper to utilize the seller's name in the practice unless the seller is deceased, disabled, or retired pursuant to Gov. Bar R. VI.

Comparison to ABA Model Rules of Professional Conduct

Rule 1.17 differs from Model Rule 1.17 as noted above.

RULE 7.5: FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a *firm* name, letterhead or other professional designation that violates Rule 7.1. A lawyer in private practice shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under the name, or a *firm* name containing surnames other than those of one or more of the lawyers in the *firm*, except that the name of a professional corporation or association, legal clinic, limited liability company, or limited liability partnership shall contain symbols indicating the nature of the organization as required by Gov. Bar R. III. If otherwise lawful, a *firm* may use as, or continue to include in, its name the surname of one or more deceased or retired members of the *firm* or of a predecessor *firm* in a continuing line of succession.

(b) A *law firm* with offices in more than one jurisdiction that lists attorneys associated with the *firm* shall indicate the jurisdictional limitations on those not licensed to practice in Ohio.

(c) The name of a lawyer holding a public office shall not be used in the name of a *law firm*, or in communications on its behalf, during any *substantial* period in which the lawyer is not actively and regularly practicing with the *firm*.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Comment

[1] A firm may be designated by the names of all or some of its members or by the names of deceased members where there has been a continuing succession in the firm's identity. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession. A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. The use of the surname of a deceased partner to designate law firms is a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm or the name of a nonlawyer.

[2] With regard to division (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm. The use of a disclaimer such as "not a partnership" or "an association of sole practitioners" does not render the name or designation permissible.

[3] A lawyer may be designated "Of Counsel" if the lawyer has a continuing relationship with a lawyer or law firm, other than as a partner or associate.

[4] A legal clinic operated by one or more lawyers may be organized by the lawyer or lawyers for the purpose of providing standardized and multiple legal services. The name of the law office may include the phrase "legal clinic" or words of similar import. The name of any active lawyer in the clinic may be retained in the name of the legal clinic after the lawyer's death,

retirement, or inactivity because of age or disability, and the name must otherwise conform to other provisions of the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio. The legal clinic cannot be owned by, and profits or losses cannot be shared with, nonlawyers or lawyers who are not actively engaged in the practice of law in the organization.

Comparison to former Ohio Code of Professional Responsibility

With the exception of DR 2-102(E) and (F), Rule 7.5 is comparable to DR 2-102.

The provisions of DR 2-102(E), which prohibits truthful statements about a lawyer's actual businesses and professions, are not included in Rule 7.5. The Rules of Professional Conduct should not preclude truthful statements about a lawyer's professional status, other business pursuits, or degrees.

DR 2-102(F) is an exception to DR 2-102(E) and is unnecessary in light of the decision to not retain DR 2-102(E).

Comment [3] is substantially the same as the Ohio provision on the "of counsel" designation.

Comment [4] addresses the restrictions of DR 2-102(G) relative to operating a "legal clinic" and using the designation "legal clinic."

Form of Citation, Effective Date, Application

(a) These rules shall be known as the Ohio Rules of Professional Conduct and cited as "Prof. Cond. Rule _____."

(b) The Ohio Rules of Professional Conduct shall take effect February 1, 2007, at which time the Ohio Rules of Professional Conduct shall supersede and replace the Ohio Code of Professional Responsibility to govern the conduct of lawyers occurring on or after that effective date. The Ohio Code of Professional Responsibility shall continue to apply to govern conduct occurring prior to February 1, 2007 and shall apply to all disciplinary investigations and prosecutions relating to conduct that occurred prior to February 1, 2007.

(c) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 5.5(d) and Comment [17] of the Ohio Rules of Professional Conduct effective September 1, 2007.

(d) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 7.4 of the Ohio Rules of Professional Conduct effective April 1, 2009.

(e) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 1.15 of the Ohio Rules of Professional Conduct effective January 1, 2010.

(f) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rules 5.5 and 8.5 of the Ohio Rules of Professional Conduct effective January 1, 2011.

(g) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rules 1.4, Comment [8], and 7.5 of the Ohio Rules of Professional Conduct effective January 1, 2012.

(h) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 8.2(c) and (d) and Comment [4] of the Ohio Rules of Professional Conduct effective June 1, 2014.

(i) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rules 1.3, Comment [5], 1.17(e)(5), and 8.5, Comment [1] of the Ohio Rules of Professional Conduct effective January 1, 2015.

(j) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rules 1.0, 1.1, 1.4, 1.6, 1.12, 1.17, 1.18, 4.4, 5.3, 5.5, 7.1, 7.2, 7.3, and 8.5 effective April 1, 2015.

(k) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 5.5 effective December 1, 2015.

(l) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 1.7, Comment [36] effective March 15, 2016.

(m) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 1.2(d) and Comments [9] and [12] of the Ohio Rules of Professional Conduct effective September 20, 2016.

(n) The Supreme Court of Ohio adopted amendments to Prof. Cond. R. 1.13, Comment [6] of Prof.Cond.R. 1.13, and Comment [15] of Prof. Cond. R. 5.5 effective May 2, 2017.

(o) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rules 1.15 and 6.1 effective February 11, 2020.

(p) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 7.5 and Comments [1] and [4] of Prof. Cond. R. 7.5 effective June 17, 2020.

(q) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 5.5 and Comments [4], [5], [15], [16], and [22] of Prof. Cond. R. 5.5 effective September 1, 2021.