Amendments to Rule 42, Ariz. R. Sup. Ct., effective January 1, 2021[1]

ER 1.0. Terminology

(a) – (b) [[No change]]

(c) "Firm" or "law firm" denotes a lawyer or lawyers in ~~a law partnership, professional corporation sole proprietorship, or other association; or lawyers employed in a legal services organization or the legal department of a corporation or other organization~~ any affiliation, or any entity that provides legal services for which it employs lawyers. Whether ~~government lawyers should be treated as a firm depends on the particular Rule involved and the specific facts of the situation~~ two or more lawyers constitute a firm can depend on the specific facts.

(d) – (f) [[No change]]

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

(~~h~~ g) [[No change to text]]

(~~i~~ h) [[No change to text]]

(~~j~~ ~~i~~) [[No change to text]]

(~~k~~ j) "Screened" denotes the isolation of a lawyer or nonlawyer 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 or nonlawyer is obligated to protect under these Rules or other law.

(1) Reasonably adequate procedures include:

(i) written notice to all affected firm personnel that a screen is in place and the screened lawyer or nonlawyer must avoid any communication with other firm personnel about the screened matter;

(ii) adoption of mechanisms to deny access by the screened lawyer or nonlawyer to firm files or other information, including information in electronic form, relating to the screened matter;

(iii) acknowledgment by the screened lawyer or nonlawyer of the obligation not to communicate with any other firm personnel with respect to the matter and to avoid any contact with any firm files or other information, including information in electronic form, relating to the matter;

(iv) periodic reminders of the screen to all affected firm personnel; and

(v) additional screening measures that are appropriate for the particular matter will depend on the circumstances.

(2) Screening measures must be implemented as soon as practical after a lawyer, nonlawyer,

[1] Additions to the text of the rules are shown by underscoring and deletions of text are shown by ~~strike-through~~.

or firm knows or reasonably should know that there is a need for screening.

(~~l~~ k) – (~~n~~ m) [[No change to text]]

(n) "Business transaction," when used in reference to conflicts of interests:

(1) includes but is not limited to:
(i) the sale of goods or services related to the practice of law to existing clients of a firm's legal practice;
(ii) a lawyer referring a client to nonlegal services performed by others within a firm or a separate entity in which the lawyer or the lawyer's firm has a financial interest; or
(iii) transactions between a lawyer or a firm and a client in which a lawyer or firm accepts nonmonetary property or an interest in the client's business as payment of all or part of a fee.
(2) does not include:
(i) ordinary fee arrangements between client and lawyer; or
(ii) standard commercial transactions between a lawyer and a client for products or services that the client generally markets to others and over which the lawyer has no advantage with the client.

(o) "Personal interests," when used in reference to conflicts of interests, include but are not limited to:

(1) the probity of a lawyer's own conduct, or the conduct of a nonlawyer in the firm, in a transaction;
(2) referring clients to a nonlawyer within a firm to provide nonlegal services; or
(3) referring clients to an enterprise in which a firm lawyer or nonlawyer has an undisclosed or disclosed financial interest.

(p) "Authorized to practice law in this jurisdiction" denotes a firm that employs lawyers or nonlawyers who provide legal services as authorized by Rule 31.1(a).

(q) "Nonlawyer" denotes a person not licensed as a lawyer in this jurisdiction or who is licensed in another jurisdiction but is not authorized by Supreme Court Rule 31.1(a) to practice Arizona law.

Comment [~~2003~~ 2021 amendment]

Confirmed Writing

[1] [[No change]]

Firm

[2] ~~Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.~~

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

[~~4~~ 2] ~~Similar q~~ Questions[2] can ~~also~~ arise with respect to lawyers in legal aid, ~~and~~ legal services organizations, and other entities that include nonlawyers and provide other services in addition to legal services. 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. For instance, an organization that provides legal, accounting, and financial planning services to clients is a "firm" for purposes of these Rules for which a lawyer is responsible for assuring that reasonable measures are in place to safeguard client confidences and avoid conflicts of interest by all employees, officers, directors, owners, shareholders, and members of the firm regardless of whether or not the nonlawyers participate in providing legal services. *See Rules 5.1, 5.2, and 5.3*.

Fraud

[~~3~~ 5] – [~~5~~ 7] **[[Renumbered; No change to text]]**

~~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 ERs 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~~

[2] Court order struck out entire word "question" but clearly only the first letter was supposed to be amended.

~~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.~~

ER 1.5. Fees

(a) – (d) [[No change]]

(e) ~~A division of fees between lawyers who are not in the same firm may be made only~~ Two or more firms jointly working on a matter may divide a fee paid by a client if:

(1) ~~the division is in proportion to the services performed by each lawyer or each lawyer receiving any portion of the fee assumes joint responsibility for the representation;~~ the firms disclose to the client in writing how the fee will be divided and how the firms will divide responsibility for the matter among themselves;

(2) the client ~~agrees~~ consents to the division of fees, in a writing signed by the client;~~, to the participation of all the lawyers involved and the division of the fees and responsibilities between lawyers; and~~

(3) the total fee is reasonable; and

(4) the division of responsibility among firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.

Comment [~~2003~~ 2021 amendment]

Reasonableness of Fee and Expenses

[1] **[[No change]]**

Basis or Rate of Fee

[2] – [3] **[[No change]]**

Term of Payment

[4] – [5] **[[No change]]**

Prohibited Contingent Fees

[6] [[No change]]

Disclosure of Refund Rights for Certain Prepaid Fees

[7] [[No change]]

~~**Division of Fee**~~

[8] ~~A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e)~~

~~permits the lawyers to~~ ~~divide a fee by agreement between the participating lawyers, if the division is in~~ ~~proportion to the services performed by each lawyer or all lawyer assume joint responsibility for the representation and the client agrees, in a writing signed by~~ ~~the client, to the arrangement. A lawyer should only refer a matter to a lawyer~~ ~~who the referring lawyer reasonably believes is competent to handle the matter~~ ~~and any division of responsibility among lawyers working jointly on a matter~~ ~~should be reasonable in light of the client's need that the entire representation be~~ ~~completely and diligently completed. See ERs 1.1, 1.3. If the referring lawyer~~ ~~knows that the lawyer to whom the matter was referred has engaged in a violation~~ ~~of these Rules, the referring lawyer should take appropriate steps to protect the~~ ~~interests of the client. Except as permitted by this Rule, referral fees are~~ ~~prohibited by ER 7.2(b).~~

[9] ~~Paragraph (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.~~

Dispute Over Fees

[~~10~~ 8] **[[Renumbered; No change to text]]**

ER 1.6. Confidentiality

(a) – (e) [[No change]]

2003 Comment [amended ~~2009~~ 2021]

[1] - [4] **[[No change]]**

Authorized Disclosure

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

[6] [[No change]]

Disclosure Adverse to Client

[7] – [20] **[[No change]]**

Withdrawal

[21] **[[No change]]**

Acting Competently to Preserve Confidentiality

[22] – [23] **[[No change]]**

Former Client

[24] [[No change]]

ER 1.7. Conflict of Interest: Current Clients

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

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

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

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client gives informed consent, confirmed in writing., and:

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

(2) the representation is not prohibited by law; and

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

(c) A lawyer may not represent a party in asserting a claim against another party represented by a firm if the same person or entity holds an ownership interest, directly or indirectly, of 10 percent or more, or has managerial authority comparable to that of a partner, in the lawyer's firm and the other firm.

Comment [~~2003~~ 2021 amendment]

[1] – [9] **[[No change]]**

Personal Interest Conflicts

~~[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of the lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, a lawyer may not allow related business interest to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See ER 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also ER 1.10 (personal interest conflicts under ER 1.7 ordinarily are not imputed to other lawyers in a law firm).~~

[~~11~~ 10] – [~~12~~ 11] **[[Renumbered; No change to text]]**

[~~13~~ 12] – [~~34~~ 33] **[[Renumbered; No change to text]]**

[34] ER 1.7(c) parallels ER 1.7(b)(3) in barring certain concurrent representations of adverse parties, irrespective of consent. Where there is an overlap of ownership or management between law firms that does not involve effective control, ER 1.7(a) and (b) will determine whether the two firms can concurrently represent adverse parties. Moreover, where a lawyer or other owner

of a firm has a financial interest in an opposing party, the interest will ordinarily be considered a "personal interest" as that term is used in ER 1.10(a) that may not be imputed to other lawyers in the firm, unless that personal interest would materially limit the other lawyers' independent professional judgment. Even though the personal interest conflict will not be imputed to other members of the firm, the lawyer must disclose the interest to the firm's client and obtain their informed consent, confirmed in writing, to proceed with the representation.

ER 1.8. Conflict of Interest: Current Clients: Specific Rules

(a) – (l) [[No change]]

(m) A lawyer wishing to engage in a business transaction with a client must comply with both ER 1.7 and 1.8(a) if:

(1) the client expects the lawyer to represent the client in the transaction; or

(2) the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction.

Comment [~~2003~~ 2021 amendment]

Business Transactions Between Client and Lawyer

~~[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyers and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See ER 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by ER 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. IN such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.~~

~~[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the materials risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See ER 1.0(e) (definition of informed consent).~~

[~~3~~ 1] The risk to a client is greatest when the client expects the lawyers to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with requirements of paragraph (a), but also with requirements of ER 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, including when lawyers refer clients for nonlegal services provided in the firm by either the lawyer or nonlawyer in the firm or refer clients through a separate entity in which the lawyer has a financial interest, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that ER 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4 2] – [~~21~~ 19] **[[Renumbered; No change to text]]**

ER 1.10. Imputation of Conflicts of Interest: General Rule

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

(b) – (e) [[No change]]

(f) If a nonlawyer is personally disqualified pursuant to paragraph (a), the nonlawyer may be screened and the nonlawyer's personal disqualification is not imputed to the rest of the firm unless the nonlawyer is an owner, shareholder, partner, officer, or director of the firm.

(g) If a lawyer is personally disqualified from representing a client due to events or conduct in which the person engaged before the person became licensed as a lawyer, the lawyer may be screened, and the lawyer's personal disqualification is not imputed to the rest of the firm unless the lawyer is an owner, shareholder, partner, officer or director of the firm.

Comment [~~2003 and 2016~~ 2021 amendment]

Definition of Firm

~~[1] For purposes of the Rules of Professional Conduct, the term 'firm' denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association; or lawyers employed in a legal services organization of the legal department of a corporation or other organization. See ER 1.0(e). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See ER 1.0 Comments [2] – [4].~~

Principles of Imputed Disqualification

~~[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by ERs 1.9(b) and 1.10(b).~~

~~[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, for example, if an opposing party in a case were owned by a lawyer in the law firm, and~~

~~others in the firm are reasonably likely to be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm. A disqualification arising under ER 1.8(l) from a family or cohabitating relationship is persona and ordinarily is not imputed to other lawyers with whom the lawyers are associated.~~

~~[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that a person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and firm have a legal duty to protect. See ERs 1.0(k) and 5.3.~~

[~~5~~ 1] – [~~11~~ 7] **[[Renumbered; No change to text]]**

ER 1.17. Sale of Law Practice or Firm

(a) A ~~lawyer or a law~~ firm may sell or purchase a law practice, or ~~an area of law practice~~ a practice area of a firm, including good will, if the ~~following conditions are satisfied~~ seller gives written notice to each of the seller's clients regarding:

~~**(a)** The seller ceases to engage the private practice of law, or in the area of practice that has been sold, in the geographic area(s) 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, including the identity of the purchaser;

(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.

(b) 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.

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

(c) A sale may not be financed by increases in fees charged to 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.

(d) Before providing a purchaser access to detailed information relating to the representation, including client files, the seller must provide the written notice to a client as described above.

(e) Lawyers participating in the sale of a law practice or a practice area must exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently, avoid disqualifying conflicts, and secure the client's informed consent for those conflicts that can be agreed to and the obligation to protect information relating to the representation.

(f) If approval of the substitution of the purchasing lawyer for a selling firm 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.

(g) This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

~~Comment [2003 rule]~~

~~[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, or ceases to practice in an area of law, 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 ERs 5.4 and 5.6.~~

~~Termination of Practice by the Seller~~

~~[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of 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. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.~~

~~[3] The requirement that the seller cease to engage in the private practice of law does not prohibit 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] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographical area rather than the jurisdiction.~~

~~[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by ER 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.~~

~~Sale of Entire Practice or Entire Area of Practice~~

[6] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area 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 or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

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 ER 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 ER 1.6(b)(7). Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. The ER provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[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 an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. (A procedure by which such an order can be obtained needs to be established in jurisdictions in which it presently does not exist.)

[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 or area of 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.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area 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 ER 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 ER 1.7 regarding conflicts and ER 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see ERs 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 ER 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 non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which 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 or an area of practice.

ER 5.1. Responsibilities of ~~Partners, Managers, and Supervisory Lawyers~~ Lawyers Who Have Ownership Interests or are Managers or Supervisors

~~**(a)** A partner in a law firm, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.~~

(a) A lawyer who has an ownership interest in a firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect internal policies and procedures giving reasonable assurance that all lawyers and nonlawyers in the firm conform to these Rules of Professional Conduct.

(1) Internal policies and procedures include, but are not limited to, those designed to detect and resolve conflicts of interest, maintaining confidentiality, identifying dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

(2) Other measures may be required depending on the firm's structure and the nature of its practice.

(b) A lawyer having ~~direct~~ supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person who is being supervised and the amount of work supervised. Whether a lawyer has supervisory authority may vary given the circumstances.

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

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer ~~is a partner~~ has an ownership interest in or has comparable managerial authority in the firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(i) Appropriate remedial action by an owner or managing lawyer depends on the immediacy of that lawyer's involvement and the seriousness of the misconduct.

(ii) A supervisor must intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

~~Comment [2003 amendment]~~

~~[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See ER 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice~~

law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include, but are not limited to, those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See ER 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c)expresses a general principle of personal responsibility for acts of another. See also ER 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and ER 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or

~~criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.~~

~~[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See ER 5.2(a).~~

ER 5.3. Responsibilities Regarding Nonlawyer~~s Assistants~~

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

~~**(a)** a partner, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm shall reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's is compatible with the professional obligations of the lawyer;~~.

(a~~b~~) ~~a lawyer having direct supervisory authority over the nonlawyer~~ A lawyer in a firm shall make reasonable efforts to ensure that the ~~person's conduct~~ firm has in effect measures giving reasonable assurance that the conduct of nonlawyers engaged in activities assisting lawyers in providing legal services and those who have access to attorney-client information, is compatible with the professional obligations of the lawyer.~~; and~~ Reasonable measures include, but are not limited to, adopting and enforcing policies and procedures designed:

(1) to prevent nonlawyers in a firm from directing, controlling, or materially limiting the lawyer's independent professional judgment on behalf of clients or materially influencing which clients a lawyer does or does not represent; and
(2) to ensure that nonlawyers assisting in the delivery of legal services or working under the supervision of a lawyer comport themselves in accordance with the lawyer's ethical obligations, including, but not limited to, avoiding conflicts of interest and maintaining the confidentiality of all lawyer client information protected by ER 1.6.

(b) A lawyer having supervisory authority over a nonlawyer within or outside a firm shall make reasonable efforts to ensure that the nonlawyer's conduct when engaged in activities assisting lawyers in providing legal services is compatible with the professional obligations of the lawyer.

(1) Reasonable efforts include providing to nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment or retention, particularly regarding the obligation not to disclose information relating to the representation of the client.
(2) Measures employed in supervising nonlawyers should take into account that they may not have legal training and are not subject to professional discipline.
(3) When retaining or directing a nonlawyer outside the firm to assist the lawyer's delivery of legal services, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.
(4) Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer.

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

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
(2) the lawyer ~~is a partner or~~ has ~~comparable~~ managerial authority in the firm ~~in which the person is employed, or has direct supervisory authority over the person,~~ and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(d) When a firm includes nonlawyers who have an economic interest or managerial authority in the firm, any lawyer practicing therein shall ensure that a lawyer has been identified as responsible for establishing policies and procedures within the firm to assure nonlawyer compliance with these rules.

Comment [~~2003~~ 2021 amendment]

[1] The rule in paragraph (d) recognizes that lawyers may provide legal services through firms that include nonlawyers as economic interest holders, owners, managers, shareholders, officers, or other nonlawyers who hold decision-making authority. Any such alternative business structure (ABS) as defined in Rule 31 must be licensed in accordance with ACJA § 7-209. Any lawyer who provides legal services through an unlicensed ABS is engaged in the unauthorized practice of law.

~~**Nonlawyers Within the Firm**~~

~~[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See ER 5.1, Comment [1] (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.~~

~~[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. Law enforcement officers generally are not considered associated with government lawyers, for purposes of this ER. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.\~~

~~**Nonlawyers Outside the Firm**~~

~~[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services~~

~~to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also ERs 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.~~

~~[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See ER 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these ERs.~~

ER 5.4. Professional Independence of a Lawyer

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

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

(2) a lawyer who purchases the practice of a deceased, disabled, or dis appeared lawyer may, pursuant to the provisions of ER 1.17, pay to the estate or to other representative of that lawyer the agreed-upon purchase price;

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

(4) a lawyer may share court-awarded legal fees or fees otherwise received and permissible under these rules with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

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

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

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

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

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

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

Comment [2003 amendment]

[1] The provisions of this Rule express traditional limitations on the sharing of fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or

~~regulate the lawyer's professional judgment in rendering legal services to another. See also ER 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).~~

ER 5.7. Responsibilities Regarding Law-Related Services

(a) A lawyer may provide, to clients and to others, law-related services, as defined in paragraph (b), either:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) by a separate entity which is controlled by the lawyer individually or with others.

Where the law-related services are provided by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer shall be subject to the provisions of the Rules of Professional Conduct in the course of providing such services. In circumstances in which law-related services are provided by a separate entity controlled by the lawyer individually or with others, the lawyer shall not be subject to the Rules of Professional Conduct, in the course of providing such services, only if the lawyer takes reasonable measures to assure that a person obtaining the law-related services knows that the services of the separate entity are not legal services and that the protections of the client-lawyer relationship do not apply.

(b) The term law-related services denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Comment [2003 rule]

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client- lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflict interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] ER 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., ER 8.4.

When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in

paragraph (a)(1).

[3] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[4] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with ER 1.8(a).

[5] In taking the reasonable measures referred to in paragraph (a) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

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

[7] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a) of the Rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by ER 5.3, that of nonlawyer employees in the distinct entity which the lawyer controls complies in all respects with the Rules of Professional Conduct.

[8] A broad range of economic and other interests of clients may be served by lawyers engaging in the delivery of law- related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

~~[9] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (ERs 1.7 through 1.11, especially ERs 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of ER 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with ERs 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.~~

~~[10] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also ER 8. 4.~~

~~[11] Variations in language of this Rule from ABA Model Rule 5.7 as adopted in 2002 are not intended to imply a difference in substance.~~

ER 7.1 Communications Concerning a Lawyer's Services

A lawyer shall not make ~~or knowingly permit to be made on the lawyer's behalf~~ a false or misleading communication about the lawyer or the lawyer's services.

(a) A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless the lawyer complies with Arizona Supreme Court Rule 44 requirements.

(c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.

Comment [~~2003 Rule~~ 2019 amendment][3]

~~[1] This Rule governs all communications about a lawyer's services, including advertising permitted by ER 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful. A clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is false or misleading.~~

[~~2~~ 1] Misleading ~~T~~truthful statements ~~that are misleading~~ are ~~also~~ prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is ~~also~~ misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement also is misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[~~3~~ 2] ~~Promising or guaranteeing a particular outcome or result is misleading.~~ A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of a clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[~~4~~ 3] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud,

[3] Comment heading as in the court order. Should refer to 2021.

deceit, or misrepresentation. ER 8.4(c). See also ER 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Firm Names

[4] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A firm name cannot include the name of a lawyer who is disbarred or on disability inactive status because to continue to use a disbarred lawyer's name is misleading. A lawyer or law firm may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[5] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading. It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. ~~Whether a communication about a lawyer or legal services is false or misleading is based upon the perception of a reasonable person.~~

[6] Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a "specialist," practices a "specialty," or "specializes in" particular fields based on the lawyer's experience, specialized training or education, but such communications are subject to the "false and misleading" standard applied in this Rule to communications concerning a lawyer's services. ~~See comment to ER 5.5(b)(2) regarding advertisements and communications by non-members. A non-member lawyer's failure to inform prospective clients that the lawyer is not licensed to practice law by the Supreme Court of Arizona or has limited his or her practice to federal or tribal legal matters may be misleading.~~

Certified Specialists

[7] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer's communications about these practice areas are not prohibited by this Rule.

[8] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia or a U.S. Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia or a U.S. Territory to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

Required Contact Information

[9] This Rule requires that any communication about a lawyer or law firm's services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.

ER 7.2 [Reserved] ~~Advertising Communications Concerning a Lawyer's Services: Specific Rules~~

~~(a) Subject to the requirements of ERs 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.~~

~~(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:~~

~~(1) pay the reasonable costs of advertisements or communications permitted by this Rule;~~

~~(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service, which may include, in addition to any membership fee, a fee calculated as a percentage of legal fees earned by the lawyer to whom the service or organization has referred a matter, provided that any such percentage fee shall not exceed ten percent, and shall be used only to help defray the reasonable operating expenses of the service or organization and to fund public service activities, including the delivery of pro bono legal services. The fees paid by a client referred by such service shall not exceed the total charges that the client would have paid had no such service been involved. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; and~~

~~(3) pay for a law practice in accordance with ER 1.17.~~

~~(c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.~~

~~(d) Every advertisement (including advertisement by written solicitation) that contains information about the lawyer's fees shall be subject to the following requirements:~~

~~(1) advertisements and written solicitations indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall disclose (A) that the client will be liable for expenses regardless of outcome unless the repayment of such is contingent upon the outcome of the matter and (B) whether the percentage fee will be computed before expenses are deducted from the recovery;~~

~~(2) range of fees or hourly rates for services may be communicated provided that the client is informed in writing at the commencement of any client-lawyer relationship that the total fee within the range which will be charged or the total hours to be devoted will vary depending upon that particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;~~

~~(3) fixed fees for specific routine legal services, the description of which would not be misunderstood or be deceptive, may be communicated provided that the client is informed in writing at the commencement of any client-lawyer relationship that the quoted fee will be available only to clients whose matters fall within the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be charged;~~

~~(4) a lawyer who advertises a specific fee, range of fees or hourly rate for a particular service shall honor the advertised fee, or range of fees, for at least ninety (90) days unless the advertisement specifies a shorter period; provided, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.~~

~~(e) Advertisements on the electronic media may contain the same information as~~ permitted ~~in~~

advertisements in the print media. If a law firm advertises on electronic media and a person appears purporting to be a lawyer, such person shall in fact be a lawyer employed full-time at the advertising law firm. If a law firm advertises a particular legal service on electronic media, and a lawyer appears as the person purporting to render the service, the lawyer appearing shall be the lawyer who will actually perform the service advertised unless the advertisement discloses that the service may be performed by other lawyers in the firm.

(f) Communications required by paragraphs (c) and (d) shall be clear and conspicuous. To be "clear and conspicuous" a communication must be of such size, color, contrast, location, duration, cadence, and audibility that an ordinary person can readily notice, read, hear, and understand it.

Comment [2003 rule]

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

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

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see ER 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.

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

[5] Except as permitted under paragraphs (b)(1)–(b)(3), lawyers are not permitted to pay others

for recommending the lawyer's services or channeling professional work in a manner that violates ER 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this ER, including the costs of print directory listings, on- line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator is consistent with ERs 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with ER 7.1 (communications concerning a lawyer's services). To comply with ER 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. Giving or receiving a de minimis gift that is not a quid pro quo for referring a particular client is permissible. See also ER 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); ER 8.4 (duty to avoid violating the ERs through the actions of another).

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. Published and electronic group advertising and directories are not lawyer referral services, but participation in such listings is governed by ERs 7.1 and 7.4. A lawyer referral service, on the other hand, is any organization in which a person or entity receives requests for lawyer services, and allocates such requests to a particular lawyer or lawyers or that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this ER only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority, such as the State Bar of Arizona, as affording adequate protections for the public.

[7] The reasonable operating expenses of a legal service plan or lawyer referral service include payment of the actual expenses of operating, conducting, promoting and developing the service, including expenditures for capital purposes for the service, as determined on a reasonable accounting basis and with provision for reasonable reserves. Public service activities of a legal service plan or lawyer referral service include the following: (a) furnishing or providing funding for legal services to persons and entities financially unable to pay for all or part of such services; (b) developing and implementing programs to educate members of the public with respect to the law, the judicial system, the legal profession, or the need, manner of obtaining, and availability of legal services; and (c) creating and administering programs to improve the administration of justice or aid in relations between the Bar and the public.

~~[8] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See ER 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these ERs. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate ER 7.3.~~

~~[9] Paragraph (f) requires communications under paragraphs (c) and (d) to be clear and conspicuous. In addition to the requirements of paragraph (f), a statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner.~~

ER 7.3 Solicitation of Clients

(a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(~~a~~ b) A lawyer shall not solicit professional employment by live person-to-person ~~in-person, live telephone or real-time electronic~~ contact ~~solicit professional employment from the person contacted or employ or compensate another to do so~~ when a significant motive for the lawyer's doing so is the lawyer's or firm's pecuniary gain, unless the ~~person contacted~~ contact is with a:

(1) ~~is a~~ lawyer; ~~or~~
(2) person who has a family, close personal, or prior business or professional relationship with the lawyer or firm; or
(3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

(~~b~~ c) A lawyer shall not solicit professional employment or knowingly permit solicitation on the lawyer's behalf ~~from the person contacted by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact~~ even when not otherwise prohibited by paragraph (~~a~~b), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
(2) the solicitation involves coercion, duress or harassment.~~; or~~
(3) ~~the solicitation relates to a personal injury or wrongful death and is made within thirty (30) days of such occurrence.~~

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

~~(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known or believed likely to be in need of legal services for a particular matter shall include the words "Advertising Material" in twice the font size of the body of the communication on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).~~

~~(1) At the time of dissemination of such written communication, a written copy shall be forwarded to the State Bar of Arizona at its Phoenix office.~~
~~(2) Written communications mailed to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted delivery.~~
~~(3) If a contract for representation is mailed with the written communication, the contract shall be marked "sample" in red ink and shall contain the words "do not sign" on the client~~

~~signature line.~~

~~(4) The lawyer initiating the communication shall bear the burden of proof regarding the truthfulness of all facts contained in the communication, and shall, upon request of the State Bar or the recipient of the communication, disclose how the identity and specific legal need of the potential recipient were discovered.~~

(~~d~~ e) Notwithstanding the prohibitions in ~~paragraph (a)~~this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses ~~in~~ live person-to-person ~~or telephone~~ contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

~~2003~~ Comment [~~2009~~ 2019 amendment][4]

[1] ~~A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a~~ A lawyer's communication ~~typically does~~ is not ~~constitute~~ a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to ~~Internet~~ electronic searches. ~~*See* ER 8.4 (duty to avoid violating the ERs through the actions of another).~~

[2] "Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, or other written communications that recipients may easily disregard. ~~There is a~~ A potential for ~~abuse~~ overreaching exists when a lawyer seeking pecuniary gain solicits ~~solicitation~~ a person ~~involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone~~ known to be in need of legal services. This ~~These~~ form~~s~~ of contact subject~~s~~ a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response ~~being retained immediately~~. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] The ~~This~~ potential for ~~abuse~~ overreaching inherent in ~~direct in-person~~, live person-to- person contact ~~telephone or real-time electronic solicitation~~ justifies its prohibition, ~~particularly~~ since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not ~~involve real-time contact and do not~~ violate other laws ~~governing solicitations~~. Those forms of communications ~~and solicitations~~ make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to ~~direct in~~ live person-to-person~~, telephone or real-time electronic~~ persuasion that may overwhelm the person's judgment.

[4] Comment heading as in the court order. Should refer to 2021.

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

[5] There is far less likelihood that a lawyer would engage in ~~abusive practices~~ overreaching against a former client or a person with whom the lawyer has a close personal, or family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for ~~abuse~~ overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. ~~Consequently, the general prohibition in ER 7.3(a) and the requirements of ER 7.3(c) are not applicable in those situations. Also, p~~ Paragraph (~~a~~b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to ~~its~~ their members or beneficiaries.

[6] ~~But even permitted forms of solicitation can be abused. Thus, any~~ A solicitation ~~which~~ that contains false or misleading information ~~which is false or misleading~~ within the meaning of ER 7.1, ~~which~~ that involves coercion, duress or harassment within the meaning of ER 7.3(~~b~~ c)(2), or ~~which~~ that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of ER 7.3(~~b~~ c)(1) is prohibited. ~~Moreover, if after sending a letter or other communication to a person as permitted by paragraph (c), the lawyer receives no response, any further effort to communicate with the person may violate the provisions of ER 7.3(b).~~ Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress ordinarily is not appropriate, including, for example, the elderly, disabled, or those whose first language is not English.

[7] This ~~ER~~ Rule ~~is~~ does not ~~intended to~~ prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a

fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. ~~Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under ER 7.2.~~

[8] ~~The requirement in ER 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.~~

[9] ~~Lawyers may comply with the requirement of paragraph (c)(1) by submitting (a) a copy of every written, recorded or electronic communication soliciting professional employment from a prospective client known or believed likely to be in need of legal services for a particular matter, or (b) a single copy of any identical communication published or sent to more than one person and a list of the names and mailing or e-mail addresses or fax numbers of the intended recipients and the dates identical solicitations were published or sent. Lawyers may comply with the requirement of paragraph (c)(1) by submitting the required communications and information to the State Bar on a monthly basis.~~

[10] ~~The State Bar may dispose of the submissions received pursuant to paragraph (c)(1) after one year following receipt.~~

[11] ~~Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with ERs 7.1, 7.2 and 7.3(b). See ER 8.4(a).~~

ER 7.4. [Reserved] ~~Communication of Fields of Practice~~

~~(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a specialist except as follows:~~

~~(1) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "patent attorney" or a substantially similar designation;~~
~~(2) a lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation; and (3) a lawyer certified by the Arizona Board of Legal Specialization or by a national entity that has standards for certification substantially the same as those established by the board may state the area or areas of specialization in which the lawyer is certified. Prior to stating that the lawyer is a specialist certified by a national entity, the entity must be recognized by the board as having standards for certification substantially the same as those established by the board. If the national entity has not been recognized by the board, it may make application for recognition by completing an application form provided by the board.~~

~~(b) Communications to the Arizona Board of Legal Specialization and its Advisory Commissions relating to an applicant's qualifications for specialization certification shall be absolutely privileged, and no civil action predicated thereon may be instituted or maintained against any evaluator, staff or witness who communicates with or before the Board or its Advisory Commissions. Members of the Board of Legal Specialization, its Advisory Commission, and others involved in the specialization certification process shall be immune from suit for any conduct in the course of their official duties.~~

~~Comment~~

~~[1] This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a "specialist" in a particular field is not permitted. These terms have acquired a secondary meaning implying formal recognition as a specialist. Hence, use of these terms may be misleading unless the lawyer is certified or recognized in accordance with procedures in the state where the lawyer is licensed to practice.~~

~~[2] Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.~~

ER 7.5. [Reserved] ~~Firm Names and Letterheads~~

~~(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates ER 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.~~

~~(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.~~

~~(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 TO 2003 AND 2012 AMENDMENTS~~

~~[1] [2012 Amendment] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity, or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation that complies with ER 7.1.~~

~~[2] [2003 Amendment] With regard to paragraph (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.~~

~~[3] [2003 Amendment] "Of counsel" designation may be used to state or imply a relationship between lawyers only if the relationship is close, personal,~~ continuous~~, and regular.~~

ER 8.3. Reporting Professional Misconduct

(a) – (b) [[No change]]

(c) A lawyer who knows that a legal paraprofessional or certified Alternative Business Structure entity has committed a violation of the applicable codes of conduct that raises a substantial question as to the person or entity's compliance with the codes shall inform the appropriate authority.

(e d) This Rule does not require disclosure of information otherwise protected by ER 1.6 or information gained by a lawyer or judge while serving as a member of an approved lawyers assistance program to the extent that such information would be confidential if it related to the representation of a client.

Comment [2003 amendment]

[1] **–** [5] **[[No change]]**

Comment to 2002 Amendment to ER 8.3(D)[5]

[[No change]]

Comment to 2021 Amendment to ER 8.3(c)

The duty to report misconduct of a legal paraprofessional that raises a substantial question as to that individual's compliance with their code of conduct as set forth in ACJA § 7-210 does not apply to a lawyer who is retained to represent the legal paraprofessional. Similarly, the duty to report misconduct by an Alternative Business Structure (ABS) entity that raises a substantial question as to the entity's compliance with the code of conduct in ACJA § 7-209 does not apply to a lawyer retained to represent the ABS but does apply to lawyers who work in or have ownership interests in an ABS.

[5] As in the court order. Should be ER 8.3(d).