

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
 ) No. R-24-0003  
RULES 42 AND 45, RULES OF THE )  
SUPREME COURT ) **FILED 8/22/2024**  
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**ORDER AMENDING RULES 42 (VARIOUS ERS) AND 45 OF  
THE RULES OF THE SUPREME COURT OF ARIZONA**

A petition having been filed proposing to amend Rule 42, including various Ethical Rules and comments, and Rule 45 of the Rules of the Supreme Court of Arizona, and comments having been received, upon consideration,

**IT IS ORDERED** that Rules 42 and 45 of the Rules of the Supreme Court of Arizona are amended in accordance with the attachment to this order, effective January 1, 2025.

DATED this 22<sup>nd</sup> day of August, 2024.

\_\_\_\_\_/s/  
ANN A. SCOTT TIMMER  
Chief Justice

TO:

Rule 28 Distribution  
Hon. William G Montgomery  
Rachel H Mitchell  
Blaine D Gadow  
Gary M Restaino  
Elizabeth Burton Ortiz  
William P Ring  
Kristin K Mayes  
Krista Wood  
Nicholas Klingerman  
Molly Patricia Brizgys  
Kathleen E Brody

## ATTACHMENT<sup>1</sup>

### RULES OF THE SUPREME COURT OF ARIZONA

#### Rule 42. Rules of Professional Conduct

##### PREAMBLE

[1] - [17] [No change]

~~[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These Rules do no [sic] abrogate any such authority.~~

[18] Government lawyers, like other lawyers, are subject to the Rules of Professional Conduct and the obligations stated in Supreme Court Rule 41, the Oath of Admission to the State Bar of Arizona, and the Lawyer's Creed of Professionalism. A government lawyer who has responsibilities assigned by law must interpret and carry out those responsibilities in a manner consistent with these Rules, Oath, and Creed. Government lawyers have additional responsibilities when acting as prosecutors, as set forth in Ethics Rule 3.8.

[19] - [20] [No change]

[21] The Supreme Court adopted amendments to the Rules of Professional Conduct and Comments effective January 1, 2025, to clarify the obligations of government lawyers where previous guidance was incomplete. None of these amendments exempts government lawyers from the general application of these Rules, nor do they limit the application of the Rules to government lawyers.

[22] The 2025 amendments are intended to accommodate, and should be interpreted in recognition of, the differences in federal government practice. One important

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<sup>1</sup> Additions to the text of a rule or comment are shown by underscoring and deletions are shown by ~~strike-through~~.

difference in federal practice is that, as a matter of federal law, litigation authority in most cases is centralized in the Attorney General of the United States. The Attorney General and any of Attorney General's designees usually represent a single client, the United States.

**[2123] [No change in text]**

## **ER 1.0. Terminology**

**(a) - (q) [No change]**

(r) "Client representative" is a duly authorized constituent of a government organization, whether an individual or a group and whether elected, appointed, or employed, who acts with authority on behalf of the government organization. In some circumstances, the client and the client representative may be the same.

(s) "Government lawyer" is an elected, appointed, or employed lawyer who has a duty to prosecute criminal cases or to provide civil and administrative advice and representation to a government organization on an ongoing basis pursuant to relevant provisions of the United States and Arizona Constitutions, statutes, and regulations, and if applicable, charters and ordinances of local governments. Government lawyers include but are not limited to the Arizona Attorney General, county attorneys, and municipal attorneys, and their deputies and assistants.

## **ER 1.1 Competence**

**[No change]**

**Comment [2003 amendment]**

**[1] – [4] [No change]**

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. *See* ER 1.2(d).

## **ER 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer**

**(a)** Subject to paragraphs (b), (c), and (d), and (e), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall

consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter pursuant to applicable law. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A government lawyer has a duty to abide by decisions that are made by the appropriate client representative regarding the goals of representation in a particular matter, unless the client representative's decisions concerning the objectives of representation are clearly inconsistent with the client representative's legal authority under applicable law or properly delegated authority.

~~(bc)~~ [No change in text]

~~(ed)~~ [No change in text]

~~(de)~~ [No change in text]

### **2003 Comment [amended 2025]**

#### **Allocation of Authority between Client and Lawyer**

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. There may be circumstances where authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships has been delegated to a government lawyer pursuant to applicable law, and in that instance, the client representative with decision-making authority is the government lawyer. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client unless applicable law provides otherwise. See ER 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by ER 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation or as provided by applicable law.

[2] - [4] [No change]

#### **Independence from Client's Views or Activities**

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

of the client's views or activities, including where such representation is generally required by applicable law as in the circumstance of a government lawyer.

**Agreements Limiting Scope of Representation**

[6] - [9] [No change]

**Criminal, Fraudulent and Prohibited Transactions**

[10] - [11] [No change]

[12] The duties of a government lawyer as specified by applicable law may include the duties to investigate the conduct of a client representative, and to criminally prosecute or bring a civil or administrative action against that client representative, either directly or through referral to a different government law firm or outside counsel. See ER 1.7 and ER 1.16 with regard to addressing conflicts of interest associated with these duties. This rule does not limit investigations or actions against a government law firm's employees.

~~[12]~~[13] [No change in text]

~~[13]~~[14] [No change in text]

~~[14]~~[15] [No change in text]

\* \* \*

**ER 1.4. Communication**

(a) - (c) [No change]

(d) Unless these requirements are otherwise satisfied by applicable law, a government lawyer must proactively identify and provide the appropriate client representative with written confirmation of the scope and pertinent details of the government lawyer's representation. The writing must also confirm that the client representative is usually not an individual client of the government law firm. Where the government lawyer also functions as the client representative, such notice is not required.

(e) A government lawyer must advise government officials, as well as any other client representative when appropriate, of the identity of the lawyer's client, the nature of the relationship between the government lawyer and the client representative, the potential impact of the government lawyer's other legal duties on the representation, and the circumstances under which a client representative may be treated as a separate client of the government lawyer. See ER 1.13 and ER 4.3 for further guidance.

**2003 Comment [Amended 2025]**

[1] [No change]

### **Identifying the client representatives for government lawyers**

[2] Section (d) requires a government lawyer to timely identify the client representative(s) who is authorized to make decisions on behalf of the client in each type of matter and in each case. The “appropriate client representative” typically includes the client’s elected and appointed officials who are regularly advised by the government lawyer and have constitutional or statutory authority for decision-making on behalf of the client. In addition to providing the written confirmation to identified client representatives, a government lawyer should determine whether it is also appropriate to provide it to other officials and employees of the client. The frequency with which the advisement referenced in section (d) is required is at least as often as client representatives are elected or appointed. The requirement in Rule 1.4(d) may be satisfied by directing the identified client representative to publicly available information, such as on the organization’s public website or in published regulations or policies.

**[23] [No change in text]**

**[34] [No change in text]**

**[45] [No change in text]**

**[56] [No change in text]**

**[67] [No change in text]**

**[78] [No change in text]**

\* \* \*

### **ER 1.6 Confidentiality**

**(a) – (e) [No change]**

#### **2003 Comment (amended 2021)**

**[1] – [7] [No change]**

**[8]** Paragraph (c) permits the lawyer to reveal the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime. Paragraph (c) does not require the lawyer to reveal the intention of a client to commit wrongful conduct, but the layer may not counsel or assist a client in conduct the lawyer knows is criminal or fraudulent. *See* ER 1.2(e); *see also* ER 1.16 with respect to the lawyer’s obligation or right to withdraw from the representation from the client, in such circumstances. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct, in

connection with the Rule, the lawyer may make inquiry within the organization as indicated in ER 1.13(b).

**[9] – [21] [No change]**

## **ER 1.7 Conflict of Interest: Current Clients**

**(a) - (c) [No change]**

### **2021 Comment [amended 2025]**

#### **General Principles**

**[1] – [5] [No change]**

#### **Identifying Conflicts of Interest: Directly Adverse**

**[6] – [7] [No change]**

#### **Identifying Conflicts of Interest: Material Limitation**

**[8] [No change]**

#### **Material Limitations for a Government Lawyer**

**[9]** Many Arizona government law firms that provide civil advice and representation to a government organization also prosecute criminal cases. Occasionally, a government lawyer will be asked to advise or represent the government organization in a civil matter involving an individual who is the subject of a pending or potential prosecution by the same government law firm. For example, a defendant in a criminal prosecution might have a claim against a client representative based on the conditions of incarceration or the actions of its law enforcement officers. Material limitation conflicts can also arise when the government lawyer is called upon to provide civil legal advice to client representatives involved in the criminal justice process. Whether this creates a disqualifying conflict of interest under ER 1.7(a)(2) depends on whether the government law firm's duties to the government organization in the civil matter will be materially limited by the law firm's duty as a prosecutor to act in the interest of justice. When determining whether a material limitation exists, a government lawyer must consider the likelihood that the lawyer's decision-making in one matter will be, or may reasonably appear to a disinterested observer to be, influenced by a desire to affect the outcome of the other matter.

**[10]** A government lawyer owes a duty of loyalty to a government organization and fulfills that duty by providing advice to the organization's client representatives. Therefore, a government lawyer cannot provide advice to, or represent, the client representative in one matter, and act as an advocate against the client representative in another matter, even when the matters are unrelated. See ER 1.16(e), and comment 4.

## **Lawyer's Responsibilities to Former Clients and Other Third Persons**

~~[911]~~ [No change in text]

### **Personal Conflicts**

~~[1012]~~ [No change in text]

~~[1113]~~ [No change in text]

### **Interest of Person Paying for Lawyer's Services**

~~[1214]~~ [No change in text]

### **Prohibited Representation**

~~[1315]~~ [No change in text]

~~[1416]~~ [No change in text]

~~[1517] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest. Model ER 1.7. Former comment 15, set forth in Model Code 1.7, comment 16, is inapplicable in Arizona.~~

~~[1618]~~ [No change in text]

~~[1719]~~ [No change in text]

### **Informed Consent**

~~[1820]~~ [No change in text]

~~[1921]~~ [No change in text]

### **Consent Confirmed in Writing**

~~[2022]~~ [No change in text]

### **Consent to Future Conflict**

~~[2123]~~ [No change in text]

### **Conflicts in Litigation**

~~[2224]~~ [No change in text]

~~[2325]~~ [No change in text]

~~[2426]~~ [No change in text]

**Nonlitigation Conflicts**

**[2527]** [No change in text]

**[2628]** [No change in text]

**[2729]** [No change in text]

**Special Considerations in Common Representation**

**[2830]** [No change in text]

**[2931]** [No change in text]

**[3032]** [No change in text]

**[3133]** When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. *See* ER 1.2(d).

**[3234]** [No change in text]

**Organizational Clients**

**[3335]** [No change in text]

**[3436]** [No change in text]

**[3537]** [No change in text]

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

**(a) - (f)** [No change]

**(g)** A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement. This rule does not apply to lawyers representing governmental agencies or officials unless, in the particular action, there is a potential for a conflict of interest between the jointly represented government agencies or officials on the issue of settlement.

**(h) - (m)** [No change]

**2021 Comment [amended 2025]**

**[1] - [10] [No change]**

[11] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under ER 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, ER 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also ER 1.0(e) (definition of informed consent). ~~This rule does not apply to lawyers representing governmental agencies or officials unless, in the particular action, there is a potential for a conflict of interest between the jointly represented government agencies or officials on the issue of settlement.~~ Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

**[12] – [19] [No change]**

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**ER 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees**

**(a) - (e) [No change]**

**2003 Comment [amended 2025]**

**[1] - [3] [No change]**

[4] When the client is an agency of one government, that agency should be treated as a private client for purposes of this Rule if the lawyer thereafter represents an agency of another government, as when a lawyer represents a city and subsequently is employed by a federal agency. ~~The question whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See ER 1.13, Comment [6].~~

**[5] - [8] [No change]**

\* \* \*

### **ER 1.13. Organization as Client**

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. In the government context, “constituents” are “client representatives.”

(b) - (g) [No change]

#### **2004 Comment [amended 2025]**

[1] - [8] [No change]

#### **Government Agency**

~~[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of lawyers may be more difficult in the government context. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes or regulation. This Rule does not limit that authority. See Scope. Government lawyers also may have authority to represent the “public interest” in circumstances where a private lawyer would not be authorized to do so.~~

~~[10] A government lawyer may have an obligation to render advice to a government entity and constituents of a government entity. Normally, the government entity, rather than an individual constituent, is the client. Some government lawyers may also be elected officials or the employees of elected officials who have statutory obligations to take formal action against individual constituents under certain circumstances. The government lawyer, therefore, must clearly identify the client and disclose to the individual constituents any limitations that are imposed on the lawyer's other legal obligations. See ER 1.2(c) and related comments. Further, where a conflict arises between a constituent and the government entity the lawyer represents or between constituents of the same government entity, the lawyer must make the identity of the client clear to~~

~~the constituents and determine which constituent has authority to act for the government entity in each instance.~~

[9] The duty defined in this Rule applies to governmental organizations. The term "constituents" in the government context is somewhat ambiguous because it might be misconstrued to reference the constituents of an elected official or elected multi-person body. For this reason, the term "client representatives" is used in the government context. The terms "constituents" and "client representatives" are synonyms.

[10] A government lawyer's duties may include an obligation to render advice to elected and appointed representatives of a government organization. Usually, the government organization, rather than an individual government client representative to whom the advice is given, is the client. Some government lawyers may also be elected officials or the employees of elected officials who have statutory obligations to take formal action against individual government client representatives under certain circumstances. The government lawyer, therefore, must clearly identify the client and disclose to the individual government client representatives the existence of those other duties, as provided in ER 1.4.

[11] Further, where a disagreement arises between client representatives of a government organization regarding what actions should be taken on the government organization's behalf, the lawyer must make the identity of the client clear to the client representatives and determine which has authority to act for the government organization in each instance. If a government lawyer cannot determine which client representative has the authority to act for the government client on the matter in question and the representatives cannot reach a consensus on how to proceed, it may be necessary to request declaratory relief.

[12] When an elected or appointed representative of a government organization or an employee of a government organization is personally named in a legal proceeding, the government lawyer may jointly represent that individual and the organizational client if permitted by these rules. The government lawyer must obtain informed consent for joint representation and inform the individual of the scope and consequences of the government lawyer's representation. Whether an individual is entitled to separate representation is a legal question based on the scope of authority, the claims at issue, the remedies sought in the litigation, and other factors.

### **Clarifying the Lawyer's Role**

~~[13]~~ [No change in text]

~~[14]~~ [No change in text]

### **Dual Representation**

~~[1315]~~ Paragraph (e) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder. The question of whether two government agencies should be regarded as the same or different clients for conflicts of interest purposes is a legal question.

### **Derivative Actions**

~~[4416]~~ [No change in text]

~~[4517]~~ [No change in text]

## **ER 1.14. Client with Diminished Capacity**

(a) – (c) [No change]

### **Comment [2003 amendment]**

[1] - [3] [No change]

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interests, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. *See* ER 1.2(e).

\* \* \*

## **ER 1.16. Declining or Terminating Representation**

(a) - (d) [No change]

(e) When a government lawyer has a good faith belief that applicable law imposes an affirmative duty to initiate an action against a client representative, the government lawyer must refer the commencement and pursuit of that action to another government law firm or outside counsel, unless it is feasible for the government lawyer to cease advising the government organization through that client representative and to advise the government organization only through other client representatives. This rule does not limit investigations or actions against a government law firm's employees.

### **2003 Comment [amended 2025]**

[1] - [3] [No change]

[4] Because a government lawyer cannot terminate representation of the government organization, if the government lawyer cannot feasibly cease advising and representing the government organization through the client representative against whom an action must be initiated, then referral of that action to another government law firm or outside counsel is required to address conflict of interest issues.

[45] [No change in text]

[56] [No change in text]

[67] [No change in text]

[78] [No change in text]

[89] [No change in text]

[910] [No change in text]

[1011] [No change in text]

[1112] [No change in text]

\* \* \*

### **ER 3.3. Candor Toward the Tribunal**

(a) – (d) [No change]

#### **Comment [2003 amendment]**

[1] - [2] [No change]

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare ER3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation proscribed in ER 1.2(e) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with ER 1.2(e), see Comment [10] to that Rule. See ER 8.4(b). Comment [2].

[4] – [10] [No change]

[11] The disclosure of a client's false testimony can result in grave consequences for the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate to deceive the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See ER 1.2(e). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus, the client could in effect coerce the lawyer into being a party to fraud on the court.

[12] – [15] [No change]

\* \* \*

#### **ER 4.1. Truthfulness in Statements to Others**

(a) – (b) [No change]

##### **Comment [2003 amendment]**

[1] - [2] [No change]

[3] Under ER 1.2(e), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in ER 1.2(e) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by ER 1.6. If disclosure is permitted by ER 1.6, then such disclosure is required under this Rule, but only to the extent necessary to avoid assisting a client crime or fraud.

\* \* \*

#### **ER 6.4. Law Reform Activities Affecting Client Interests**

**[No change]**

##### **Comment [2003 amendment]**

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

\* \* \*

#### **ER 6.5. Nonprofit and Court-Annexed Limited Legal Service Programs**

**(a) – (c) [No change]**

##### **Comment [2003 amendment]**

**[1] [No change]**

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. *See* ER 1.2(d). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including ERs 1.6 and 1.9(a) are applicable to the limited representation.

**[3] – [5] [No change]**

\* \* \*

#### **ER 8.4. Misconduct**

**(a) – (g) [No change]**

##### **Comment [amended effective Dec. 1, 2002]**

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income

tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even one of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer who in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. This does not preclude legitimate advocacy when race, sex, religion, national original, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of ER 1.2(e) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

**COURT COMMENT TO EXPERIMENTAL 2001 AMENDMENT TO ER 8.4(G)**

[No change]

**COMMENT [EFFECTIVE DEC. 1, 2003]**

[No change]

**COURT COMMENT TO 2004 AMENDMENT**

[No change]

\* \* \*

## **Rule 45. Mandatory Continuing Legal Education**

### **(a) Continuing Legal Education Requirements.**

**1.** [No change]

**2.** A minimum of three hours of continuing legal education activity each educational year shall be in the area of professional responsibility. Professional responsibility includes instruction in legal and judicial ethics, professionalism, and malpractice prevention, and may include such topics as substance abuse, including causes, prevention, detection and treatment alternatives, attorney fees, client development, law office economics and practice, alternatives to litigation for managing conflict and resolving disputes, stress management, and the particular responsibilities of public lawyers, judges, and in-house counsel, to the extent that professional responsibility is directly addressed in connection with these topics. Lawyers elected, appointed or employed as government lawyers must have at least one hour on rules that are specifically applicable to government lawyers by July 1, 2025, or if not a government lawyer on the effective date of this amendment to this rule, within one year after being appointed or employed as a government lawyer.

**3. – 6.** [No change]

**(b) – (k)** [No change]