STARTING A NONPROFIT: WHAT YOU NEED TO KNOW APPENDICES

University of Richmond School of Law
Nonprofit Organizations
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CHAPTER 1 APPENDIX

NEEDS ASSESSMENT and MARKET ANALYSIS APPLIED

For our purposes, we have decided that we want to set up a nonprofit which will service the legal needs of cancer patients in Southwest Virginia, tentatively in Roanoke and the surrounding area.

I. Who, What and Where: An Overview of the Roanoke Population

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A. Demographics[1]

To determine the general make-up of the Roanoke population, we first looked at basic demographic data compiled from various web sites. We wanted to determine the basic population size, income level, and racial make-up of the area, as well as languages spoken. These figures help us to better understand the constituency we will be serving. In order to put this information in perspective as far as determining the relative needs of this population, we compared the Roanoke area to the state overall.

As of the census of 2000, there are 94,911 people, 42,003 households, and 24,235 families residing in Roanoke city. The racial makeup of the city is 69.38% White, 26.74% African American, 0.20% Native American, 1.15% Asian, 0.02% Pacific Islander, 0.72% from other races, and 1.78% from two or more races. 1.48% of the population are Hispanic or Latino of any race.

Of 42,003 households, 25.5% have children under the age of 18 living with them, 16.5% have a female householder with no husband present, and 12.8% have someone living alone who is 65 years of age or older.

Roanoke's population has 22.6% under the age of 18, 8.2% from 18 to 24, 30.5% from 25 to 44, 22.3% from 45 to 64, and 16.4% who are 65 years of age or older. The median age is 38 years.

The **per capita income for the city is $18,468**. **15.9% of the population and 12.9% of families are below the poverty line.** Out of the total people living in poverty, 24.4% are under the age of 18 and 11.3% are 65 or older.

The United States Census Bureau includes in Roanoke's metropolitan area the **counties of Botetourt and Roanoke, and the cities of Salem and Roanoke**. The metropolitan area's population in the past census was 235, 932.

Roanoke has a very small percentage of non-English speaking residents. While 4.6% speak a language other than English at home, only 1.7% speak English "less than very well." Those that

[1] *See* http://www.nationmaster.com/encyclopedia/Roanoke,-Virginia; http://roanokeva.usl.myareaguide.com/census.html; http://www.poecronk.com/market/swva/3806800.pdf.

cannot speak English well are split almost evenly between Spanish, Asian-Pacific, and Indo-European. This indicates a low need for translators as we begin to provide services here.

Due to low income levels, many Roanoke residents likely lack health insurance. The Free Clinic of the New River Valley, accessible to residents of Roanoke, serves uninsured residents who meet their income guidelines. Residents are eligible for care if their income falls below $10, 855 for a single person household.[2] According to the Clinic's newsletter for Spring 2003, "During the fiscal year 2002, the Clinic set two all-time records by serving 2,993 New River Valley patients."[3] As noted below, this could account for a lack of preventative care, which leads to the high incidence of cancer in the area.

POPULATION AND INCOME[4]

Area	Per Capita Income
Allegheny County	19,635
Botetourt County, VA	13,810
Bedford County, VA	14,305
Craig County, VA	11,186
Franklin County, VA	11,936
Montgomery County, VA	17,077
Roanoke County, VA	24,637
Bedford, VA	15,423
Clifton Forge, VA	15,182
Covington, VA	16,758
Roanoke, VA	18,468
Salem,VA	20,091
Average Per Capita Income	16,542

Total Population for Roanoke and Surrounding Area: 462,126

PER CAPITA INCOME AS COMPARED TO STATE OVERALL

Roanoke and Surrounding Area	Virginia
$16,542	$32,459

[2] *See* http://www.nrvfreeclinic.org/eligibility/index.html
[3] *See* http://www.nrvfreeclinic.org/pdfs/spring_newsletter2003.pdf
[4] *See at* http://www.poecronk.com/market/swva/3806800.pdf; http://quickfacts.census.gov/qfd/states/51000.html; http://www.roanokeva.gov/WebMgmt/ywbase61b.nsf/CurrentBaseLink/N25ZEHYC976LBASEN.

Average per capita income is significantly below the state per capita income. While the cost of living is slightly lower, the cost of living difference only slightly corrects for this difference in income.[5]

THE SPECIFICS

Along with basic socio-economic data and indicators, we needed to determine the incidence of cancer in the Roanoke area to make sure that a sufficient constituency base exists to support a legal services organization set up specifically to address to needs of those suffering from the ramifications of cancer. We located statistical data concerning cancer incidence in Roanoke on-line at the Virginia Health Department web site, http://www.vahealth.org/cancerprevention/analysis.pdf. We found the following:

CANCER SPECIFIC RISKS[6]

Cancer Site		Incidence/ 100,000 (Rank)	Percent Local Stage Disease (Rank)	Mortality Per 100,000	Risk Factor Prevalence (Rank)	Overall Quartile
Breast	Roanoke	230.6 (35)	69.2 (12)	43.4 (27)	57% (15)	4
	Virginia	127.1	66.8	30.8	55%	
Cervical	Roanoke	51.3 (30)	88.5 (16)	7.9 (35)	55% (33)	4
	Virginia	36.6	88.1	3.3	70%	
Colorectal	Roanoke	102.2 (35)	33.0 (13)	31.6 (31)	37% (9)	4
	Virginia	43.1	31.7	19.4	30%	
Lung	Roanoke	120.2 (35)	N/A	88.5 (31)	37% (2)	3
	Virginia	56.4	N/A	56.0	49%	
Prostate	Roanoke	169.9 (30)	66.7 (28)	38.5 (28)	N/A	4
	Virginia	99.9	76.8	25.3	N/A	

Incidence of cancer in the Roanoke area is high, likely due to a lack of preventative care which stems from the low income and lack of health insurance.

Rank -Compared to overall health districts in Virginia. Range: 1 (low)- 35 (high)

Risk Factors[7] - Breast Cancer: Mammogram in past year
Cervical: Pap smear in prior year
Colorectal: Endoscopies
Lung: Smoking prevalence

Overall Quartile- Composite risk based on incidence, present local disease, mortality, and risk factor prevalence. Quartile 1= lowest risk and quartile, 4= highest risk.

[5] *See* http://www.roanokeva.gov/WebMgmt/ywbase61b.nsf/CurrentBaseLink/N25ZEJ2M944LBASEN.
[6] *See* http://www.vahealth.org/cancerprevention/analysis.pdf.
[7] i.e. Lack of preventative screening increases the incidence and severity of cancer in the Roanoke area.

SUMMARY OF CANCER INCIDENCE IN ROANOKE

Demographic Characteristics of Roanoke Health District are fairly similar to that for Virginia overall, with slightly higher elderly and non-white proportions of the population. The overall risk factor for the area is very high, with four of five preventable cancers ranked in the highest risk ranking, quartile 4. Only lung cancer is ranked in the second highest risk ranking, quartiles 3.

Breast cancer in this health district has a 200% higher incidence than for the state overall. The mortality rate is higher than in Virginia overall, but has remained static over time. The early detection rate is still less than 70% and is not improved over time, perhaps due to the lower per capita income than in the state overall translating into less access to health care and preventative measures and less medical resources. The mammography screening rate is low, but is improving.

Cervical cancer is also high risk preventable cancer in the Roanoke Health District and the incidence is high as well as the mortality. Pap screening is low at 15% below the state average. Early detections rates are comparable to the state, but the screening for cervical cancer has gone down.

Colorectal cancer is also high risk. The incidence is more than 200% of that in the state overall, and mortality is significantly higher. Early detection rates are similar to that in the state overall, which is low to begin with, but there has been no improvement in early detection over time.

Lung cancer, with quartile rating 3, has an incidence more than 200% of the state incidence as well. Mortality is also higher and has continued to increase.

Prostate cancer has a higher incidence and mortality rate in the Roanoke Health District than in Virginia overall, the early detection rate is lower, and has decreased over time. Mortality rates are down slightly despite the decrease in early detection.

The high incidence of cancer and low incomes of many Roanoke residents indicates a potential need for a legal services organization for those suffering from cancer. While the population is conducive to such services, the next step is to determine whether such services are already available.

WHAT THE DEMOGRAPHICS MEAN

The Roanoke Health District has a significantly lower per capita income than does Virginia overall, which could account for lack of preventative health care and therefore the much higher incidence, lower rate of early detection, and higher mortality for cancer. Although demographics in Roanoke as far as age and race are similar to the state overall, the difference in income and the perhaps related much higher incidence of cancer and resultant mortality, indicates that the population of Roanoke and surrounding area likely has a great need for low-cost legal assistance for those legal complications arising out of and heightened by cancer.

Given the presence of the Cancer Center of Western Virginia, the need for legal assistance for those complications arising out of this illness will be even greater, and may include a

constituency base that stretches beyond Roanoke into Tennessee and West Virginia. This analysis may depend on whether such services are already available to persons in these locations that suffer from cancer. Conducting a search of the services available in the relevant areas may be necessary if the organization wishes to broaden its constituency to include these persons. In addition, this may broaden fund-raising efforts and influence the geographic area and the make-up of the Board of Directors.

B. Potential Competitors or Organizations for Collaboration in Roanoke

Using the sources mentioned above, we identified several resources that might be potential competitors or organizations for collaboration. We were looking for legal and medical organizations that might partner with our organization, and to make sure that the services that we want to offer are not already being provided in the Roanoke area.

We found that there are not any groups in the Roanoke area currently focused on providing legal services to cancer patients. The legal aid offices will give assistance but they have income requirements that not all cancer patients will meet.

AVAILABILITY OF LEGAL SERVICES IN ROANOKE AND SURROUNDING AREA

The Virginia State Bar offers a lawyer referral line for the general public.[8] The Virginia Lawyer Referral Service can be contacted at 804-775-0808 or at the toll free number of 800-552-7977.[9] The service will take basic information regarding the legal matter and will provide the number of an attorney to the caller who then must contact the attorney for appointment.[10] The charge at the time of the appointment is only $35 for a half hour appointment.[11]

The Circuit Court Clerk's Office for Roanoke County, Virginia has a website which clearly states that they are not able to provide advice but refers inquiries to the Piedmont Legal Services, Inc./Legal Aid Society of Roanoke Valley.[12] These offices may be contacted at 540-34-2080 or 540-344-2088.[13] This court handles real estate, marriages and divorces and probate and estate matters.[14]

The Legal Aid Offices available to residents of the Roanoke area can be found at Blue Ridge Legal Services, Inc. which takes applications for aid for the Legal Aid Society of Roanoke Valley. These offices provide services for bankruptcy, divorces and wills for the elderly and the terminally ill but they do not specifically target or offer services for cancer patients.[15] The availability for services depends on the income level of the individuals which must be less than

[8] *See* The Virginia State Bar Association, Virginia Legal Referral Services, http://www.vsb.org/vlrs.html
[9] Id.
[10] Id.
[11] Id.
[12] http://www.roanokecountyva.gov/Departments/CircuitCourtClerksOffice/Default.htm
[13] Id.
[14] Id.
[15] Telephone conversation with Nancy, Blue Ridge Legal Services (Spring 2005) and a Telephone conversation with Charity, Blue Ridge Legal Services (April 7, 2005).

$15,613 for a household of two people.[16] If applicants for legal services do not meet this eligibility requirement, services will not be free, but they might still receive services for a reduced fee.[17]

MEDICAL ORGANIZATIONS IN THE ROANOKE AREA

For our purposes, it will also be helpful to contact medical organizations and agencies in the Roanoke area that might provide information and referrals. Such organizations include: Roanoke City Department of Social Services, Roanoke County Department of Social Services, the Roanoke office of the American Cancer Society, Carilion Cancer Center of Western Virginia, Bedford Memorial, Gill Memorial EENT Hospital, CentraHealth LGH/VBH, Columbia Lewis-Gale Medical Center, and HCA Hospitals of Southwest Virginia.

All of the above organizations deal with cancer patients on a day-to-day basis and will be excellent sources for referrals. They will also be able to provide us with their current procedures for dealing with patients that have financial or legal needs so that we would be better able to tailor the organization to the needs of those patients. Also see Chapter 4's section "Sources for Board Members" for listings of hospices and an oncology practice.

When contacting organizations in the medical field it will be helpful if we emphasize that this organization will not be providing any medical malpractice services. This information should create a greater degree of openness and receptiveness, because it lets the medical professionals know that our organization is intended solely for the benefit of cancer patients and will not pursue endeavors that would be to the detriment of partners in the area.

C. Identify the Geographic Area

The geographic area of greater Roanoke was chosen in this example because of the needs assessment which indicated that this area may benefit from this type of nonprofit organization. The greater area was chosen instead of just the city of Roanoke because we wanted to encompass more people and serve the same area as the hospitals.

Roanoke is home to the Carillion Cancer Center of Western Virginia, a facility which conducts out-patient treatments for persons all over western Virginia and the surrounding area. This facility offers both medical oncology and radiation oncology services. For the purposes of an organization that will provide legal services to cancer patients, the location of this center in Roanoke is key, increasing the potential need for the service and increasing the number of potential constituents. It may also change the geographical area which we will serve and that we will need to later research. Notably, the center also conducts clinical trials for cancer patients, conducting national clinical drug trials and offering advanced and sometimes experimental treatment options.[18] This means that patients often come from not only Virginia, but also from

[16] Telephone conversation with Charity, Blue Ridge Legal Services (April 7, 2005). http://www.brls.org/RTF1.cfm?pagename=Services.
[17] Id.
[18] http://www.carilion.com/cancer/

Tennessee and West Virginia, to receive treatment. Over three-hundred people have taken advantage of these clinical trials since the beginning of this program.[19]

D. Identify Stakeholders

When forming a legal support organization for cancer patients, stakeholders include cancer patients, lawyers, the legal community at large, hospitals, doctors, medical social workers, and potential donors. Donors can also be found by contacting local medical and legal foundations, as well as local charitable giving consortiums, including the United Way and community foundations.

In the Roanoke area, specifically, The Foundation for Roanoke Valley[20] helps individuals and families to establish charitable funds and awards grants to local organizations. The Foundation looks for innovative but practical approaches for solving community problems, a well planned approach to important community issues, an efficient use of community resources, the involvement of underserved constituencies and the coordination and involvement of other organizations in the area. This would be a good place for start-up funding because they do not usually give to established organizations, but rather to people with new ideas to fulfill a need in the community.

In the legal community, we should also contact the Roanoke Bar Association Foundation[21] for fundraising support and as a source for potential volunteers. Large local firms such as Woods Rogers[22] are also good contacts, as they may be able to provide pro-bono attorneys, as well as information about general practices in the area, such as who they refer clients that they do not take on as a result of income restrictions.

One thing to consider as we locate potential legal stakeholders in the community is whether there is a sufficient volunteer base, or enough attorneys to fill the needs of another nonprofit legal services organization. If there are not enough attorneys to fill volunteer needs, this may mean that our nonprofit needs more staff attorneys, a consideration which will require much different funding needs in order to provide salaries and a permanent office.

Finally, we should contact local courts to determine if there are any free clinics in the area, and if they exist, what organizations are sponsoring them. These local clinics could serve as a source for referrals or as a potential alternative for clients that the new organization is unable to help, and their sponsors may also be a source of funding for the new organization.

Major employers in the area are also stakeholders for our organization. Their employees will use our services, and they may be a source of corporate funding and donations. Examples of the major employers for Roanoke County are listed below. They may be a good resource for potential board members, fundraising or other resources.

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[19] Id.
[20] http://www.foundationforroanokevally.org
[21] http://www.roanokebar.com/foundation.html
[22] 10 South Jefferson Street, Suite 1400, Roanoke, VA 24011; Phone: 540.983.7600

Major Manufacturing Employers in Roanoke County[23]:

1. John W. Hancock, Jr., Inc.
300-599 employees
Fabricated Metal Industry

2. Medeco Security Locks, Inc.
300-599 employees
Hardware Industry

Major Non-Manufacturing Employers in Roanoke County[24]:

1. Allstate Insurance Co., Inc.
1000-1499 employees
Insurance services

2. Wachovia
1000-2499 employees
Banking Industry

Medical organizations and agencies in the Roanoke area, useful as sources for patient referrals as well as providing information on general practices and customs in the Roanoke area, include the following:

1. Roanoke City Department of Social Services
1510 Williamson Road NE
Roanoke, VA 24012
Phone: (540) 853-2591
Fax: (540) 853-2027

Contact: Jane R. Conlin, Director

2. Roanoke County Department of Social Services
220 East Main Street
P. O. Box 1127
Salem, VA 24153-1127
Phone: (540) 387-6087
Fax: (540) 387-6210

Contact: Betty McCrary, Director

[23] This information was found under the Community Profiles section at: www.yesvirginia.org, the website for the Virginia Economic Development Partnership, a state authority
[24] Id.

3. Roanoke office of the American Cancer Society
9 E Church Ave
Roanoke, VA 24011
Phone: (540) 344-8699
Fax: (540) 345-2361

4. Carilion Cancer Center of Western Virginia
2013 S. Jefferson St.
Roanoke, VA 24014
Phone: (540) 266-6000
Toll Free: (800) 422-8482

5. Bedford Memorial
1613 Oakwood St.
P.O. Box 688
Bedford, VA 24523
Phone: 540-586-2441

6. Gill Memorial EENT Hospital
707 S Jefferson St
Roanoke, VA 24016
Phone: (540) 344-2071

7. CentraHealth LGH/VBH
1920 Atherholt Road
Lynchburg, VA 24501-1104
Phone: (434) 947-3000

8. Columbia Lewis-Gale Medical Center
1900 Electric Road
Salem, VA 24153-7494
Phone: (800) 543-5660
Fax: (540) 776-4736
Website: http://www.lewis-gale.com/

9. HCA Hospitals of Southwest Virginia
1900 Electric Road
Salem, VA 24153
Phone: (540) 772-2890
Website: http://electahealth.com

Contacts at the Carilion Cancer Center and the local hospitals can provide patient referrals from doctors and nurses that identify patients with needs. Additionally, they will be able to provide us with their current procedures for dealing with patients that have financial or legal needs so that we would be better able to tailor the organization to the needs of those patients. A close

relationship with doctors in the area will provide our organization with the information that will be necessary to assist clients that are receiving treatment locally.

Contacting the HCA Hospitals organization will provide information about the operations of all five of their hospitals in western Virginia. This data will include names and contact information for individuals that can assist our organization.

When contacting organizations in the medical field we should indicate that this organization will not provide any medical malpractice services. This information will create a greater degree of openness and receptiveness, because it lets the medical community know that our organization is intended solely for the benefit of cancer patients and will not pursue endeavors that might be detrimental to medical professionals.

The Roanoke City and County Departments of Social Services will be invaluable for client referrals as a result of their daily interactions with needy individuals suffering the financial burdens resulting from cancer treatment. The Roanoke office of the American Cancer Society is also a resource both for client referrals and for fund raising opportunities. Through the American Cancer Society, our organization might receive information about community fund raising events as well as a list of potential donors.

E. Sources for Board Members and Volunteers

Here are some examples of actual business and organizations in Roanoke which may be good sources for board members and volunteers:

Cancer Practice in Roanoke, VA:

1. Blue Ridge Cancer Care:
Their website has contact information for several oncology/hematology and radiation oncology offices in Roanoke and surrounding areas:
http://www.visionefx.net/Blue%20Ridge/contact.htm#roanoke1

Hospices located in Roanoke, VA[25]:

1. Good Samaritan Hospice
3825-A Electric Road
Roanoke, VA 24018
Phone: 540-776-0198
Toll Free: 888-466-0198
Fax: 540-776-0841
E-mail: info@goodsamhospice.org
Website: http://www.goodsamhospice.org/index.htm

[25] The three hospices were found using a search of the database on the website of the National Hospice and Palliative Care Organization at: http://www.nhpco.org/custom/directory/

Contacts: Ms. Suzanne Moore, MSN or Ms. Laura Garnett

2. Gentle Shepherd Hospice, Inc.
4005 Electric Rd. SW
Roanoke, VA 24014
Phone: 540-989-6265
Toll Free: 800-789-0586

Contacts: Mr. Don Eckenroth or Ms. Tracie McKenney

3. Carilion Hospice Services-Roanoke
1917 Franklin Rd. SW, Suite B
Roanoke, VA
Phone: 540-224-4753
Toll Free: 800-964-9300

Contacts: Ms. Linda Mercer Royal, RN, BS or Ms. Alyson Lawson, RN, BSN

Bar Associations located in and serving Roanoke:

1. Roanoke Bar Association
P. O. Box 18183
Roanoke, VA 24014
Phone: (540) 342-4905
Fax: (540) 342-1252
Email: roanokebar@earthlink.net
President: Elizabeth K. Dillon
President-Elect: Steven L. Higgs
Executive Director: Cathy Caddy

2. Virginia State Bar
707 E. Main Street, Suite 1500
Richmond, Virginia 23219-2800
Phone: (804) 775-0500
Website: www.vsb.org

3. Virginia Bar Association
701 E. Franklin St., Ste. 1120
Richmond, VA 23219
Phone: (804) 644-0041
Website: www.vba.org

Major Law Firms in Roanoke[26]:

1. Brumberg, Mackey and Wall, P.L.C.
300 Professional Arts Bldg., 30 West Franklin Rd.
P.O. Box 2470
Roanoke, VA 24011
Phone: 540-343-2956
Web site: www.bmwlaw.com
There are six lawyers in this firm.

2. Glenn, Feldman, Darby & Goodlatte, P.C.
210 1st Street S.W., Suite 200
P.O. Box 2887
Roanoke, VA 24001
Phone: 540-224-8000
Web site: www. Gfdg.com
There are 11 lawyers in this firm

3. Gentry, Locke, Rakes & Moore
Sun Trust Plaza
10 Franklin Rd., S. E.
Suite 800
P.O. Box 40013
Roanoke, VA 24022
Phone: 540-983-9300
Web site: www.gentrylocke.com
There are 51 lawyers in this firm.

Churches in Roanoke[27]:

1. There are six Lutheran churches with one as an example:
Christ Lutheran Church
2011 Brandon Ave. SW
Roanoke, VA 24015
Phone: (540) 982-8334

2. There are over 60 Baptist churches with one as an example:
Blue Ridge Baptist Church
974 Colonial Rd
Blue Ridge, VA 24064
Phone: (540) 977-2041

[26] The firms were found using the search function at www.martindale.com, a nationwide directory of lawyers and law firms.
[27] The churches were found using the search feature at: www.usachurch.com

3. There are 21 Methodist churches with one as an example:
Grace United Methodist Church
4404 Williamson Rd., NW
Roanoke, VA 24012
Phone: (540) 366-0790

II. Mission Statement for Our Roanoke Nonprofit

Based on the high incidence of cancer in the Roanoke Area, the low overall income of the area, and the current lack of legal services for the needs arising out of cancer, we devised the following purpose and mission:

Short Mission Statement:
A nonprofit organization dedicated to providing cancer patients and their families in the greater Roanoke area with referrals for legal services and legal advice.

Detailed Mission Statement:
The purpose of this organization will be to address the legal needs of cancer patients that arise out of, or are heightened by their illness and treatment. These needs may include filing for Medicare, securing Social Security and disability benefits, debt management, creation of wills, estate planning, employment disputes, and arranging for care and custody of children. We will provide these services through private attorneys either working pro-bono or on a sliding scale. The organization seeks to work hand in hand with other community organizations, such as medical and legal organizations, to serve the needs of cancer patients.

CHAPTER 2 APPENDIX

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Sample Articles Of Incorporation And Sample By-Laws

I. Sample Articles of Incorporation

ARTICLES OF INCORPORATION[28]
OF
_____, INC.,
A NONSTOCK CORPORATION

The undersigned person(s), pursuant to Chapter 10 of Title 13.1 of the Code of Virginia of 1950, as amended, hereby adopt and set forth the following articles of incorporation:

Article I – Name

The name of the Corporation is _____ Inc.[29]

Article II – Purpose and Powers[30]

The Corporation is organized exclusively for charitable, religious, educational, or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended, including, without limitation, the purposes of _____. The Corporation shall not be operated for the primary purpose of carrying on a trade or business for profit. The Corporation shall have all powers granted under Va. Code Ann. § 13.1-826 and any other applicable statute.

Article III – Limitations[31]

At all times, the following shall operate as conditions restricting the operations and activities of the Corporation:

1. No part of the net earnings of the Corporation shall inure to the benefit or be distributed to any private person except the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payment and distributions in furtherance of the purposes set forth in Article II hereof;

[28] Many provisions in the Sample Articles have been taken from Henry A. Hart, *Virginia Tax-Exempt Organizations—Organizational, Operational and Liability Considerations, in* TAX-EXEMPT ORGANIZATIONS, at III-5 to III-7, III-30 to III-33 (Virginia Law Foundation 2002).
[29] *See* VA. CODE ANN. § 13.1-829.
[30] This Article should set forth general tax exempt purposes of the nonprofit with appropriate language in light of the subsection of IRC § 501(c) under which exemption is sought. *See* IRS Publication 557.
[31] *See* IRS Publication 557.

2. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation nor shall it in any manner or to any extent participate in or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office; nor shall the Corporation engage in any activities that are unlawful under the applicable federal, state, or local laws; and

3. Notwithstanding any other provision of these Articles, the Corporation shall neither have nor exercise any power, nor shall it directly or indirectly engage in any activity that would (1) prevent it from obtaining exemption from federal income taxation as a corporation described in § 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended, or (2) cause it to lose such exempt status.

Article IV – Members

The Corporation is to have no members.[32]

(In the case of a nonprofit with the goal of providing legal services to individuals and their family members afflicted with cancer, a non-membership organization is preferable. The individuals that the nonprofit serves will not be limited to members, but rather will extend to the public at large. Since such membership is not critical, it is preferable to not have members so as to preserve control and decision-making authority in the board of directors and to not have the additional expense of keeping up memberships.)

Article V - Registered Office and Registered Agent[33]

The address of the initial registered office of the Corporation in the Commonwealth of Virginia is located in the City of Roanoke, at _____ Roanoke, Virginia, and the name of its initial registered agent at such address is _____ [who is a resident of Virginia and (an initial director of the Corporation) *or* (a member of the Virginia State Bar)] *or* [which is a domestic or foreign stock or nonstick corporation, limited liability company, or registered limited liability partnership authorized to transact business in Virginia].

Article VI - Principal Office

The address of the principal office of the Corporation is located in the City of Roanoke, at _____, Roanoke, Virginia _____.

[32] Alternatively, if the nonprofit is to have members: "The Corporation is to have the following class(es) of members:_____." This Article should set forth any provisions designating the class(es) of members, stating the qualifications and rights of the members of each class and conferring, and limiting or denying the right to vote or provide in the articles that such provisions may be included in the Bylaws.

[33] *See* VA. CODE ANN. § 13.1-819(A)(5).

Article VII - Directors

The directors of the Corporation are to be elected or appointed by [manner in which directors are to be elected or appointed].[34] The number of directors constituting the initial Board of Directors is _____ (__); and, the name and address of each such director is as follows:

NAME	ADDRESS
_____	_____
	_____
_____	_____
	_____

The number of directors may be amended as provided in the Bylaws of the Corporation.

Article VIII – Dissolution[35]

Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by the Circuit Court of the city or county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations as said Court shall determine, which are organized and operated exclusively for such purposes.

Executed this ____ day of _____, 200__.

_____
_____ Incorporator

_____ 200_

[34] If directors are to be elected by cumulative voting, it must be so stated. VA. CODE ANN. § 13.1-852. If director terms are to be staggered, it must be so stated. VA. CODE ANN. § 13.1-858. If directors are to be removed only for cause (as opposed to with or without cause), it must be so stated. VA. CODE ANN. § 13.1-860.
[35] *See* IRS Publication 557.

Office of the Clerk
State Corporation Commission
Post Office Box 1197
Richmond, Virginia 23218-1197

Re: Articles of Incorporation for _____ (the "Corporation")
Dear Sir or Madam:

Enclosed please find Articles of Incorporation for the Corporation and a check in the amount of Seventy-five and 00/100 Dollars ($75.00).

Please record the Articles of Incorporation and return the certificate and receipt to me. Please call with any questions or comments you may have.

Sincerely,

_____

Enclosures – 2

II. Sample Bylaws

Below are sample bylaws along with a discussion that would be appropriate for a legal aid society in Roanoke, Virginia. It is a non-membership society, since the legal services will be open to the general public that is suffering the financial consequences of cancer.

Article I – Name and Location

1.1 The name of the Corporation shall be [Corporation].

1.2 The principal office of the Corporation shall be located within Roanoke, Virginia.

The corporation must choose a legally available corporate name. It may be necessary to contact a lawyer or corporate name service in order to find an available name. It is important to re-reserve the name, if the corporation takes awhile to officially form, in order to ensure the availability. In addition to availability, the name must be distinguishable from the names of other corporations in Virginia.

Article II – Purposes

2.1 The purpose for which the Corporation is formed is [insert mission statement here] and any and all services that the Board of Directors sees fit.

In addition to the mission statement, it is necessary to include a provision that will ensure that the corporation is consistent with the Internal Revenue Code §501(c)(3) tax exempt status. Additionally, after the mission statement it is important to include a "catch-all" phrase to allow for flexibility in the corporation.

Article III – Board of Directors

3.1 Powers & Duties

3.1.1 General Powers

The business and affairs of the Corporation shall be conducted under the direction of, and the control and disposal of, the Corporations' properties and funds shall be vested in its Board of Directors, except as otherwise provided in the nonprofit corporation law of the Commonwealth of Virginia, the Corporation's Articles of Incorporation, or these Bylaws.

3.1.2 Duties

The Board of Directors is charged with (2) two primary duties: the Duty of Care and the Duty of Loyalty.[36]

Duty of Care requires board members to act (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner the director reasonably believes to be in the best interests of the Corporation.

Duty of Loyalty requires board members to pursue the Corporation's best interest, whether over money or politics. The Duty of Loyalty prohibits a director from engaging in self-dealing unless there is full disclosure to the board and the transaction is clearly in the corporation's best interest.

3.2 Number, Election, Term, and Qualifications

3.2.1 Number
There shall be no fewer than 3 and no more than 21 members of the Board.

3.2.2 Terms and Term Limits
Each board member shall be elected at an annual meeting by the full board to serve a three-year term. The term is once renewable such that a board member may serve two consecutive three-year terms. Board members shall be divided into three classes to achieve a staggered rotation of terms.

The minimum number of board members set at three allows the organization to begin to function as soon as it is incorporated. Providing an acceptable range of members allows for growth of

[36] Futter, Victor, Nonprofit Governance & Management, "Chapter 8: Duties and Potential Liabilities of Officers and Directors of Nonprofit Organizations", 2002, pp. 84-87)

the board over time. Setting a number divisible by (3) three affords the board an opportunity to set a rotation such that when 1/3 of the board is newly elected, 1/3 has completed a year of service, and 1/3 is serving the final year of a single term.

3.2.3 Eligibility for Renewal
A board member who has completed two consecutive terms shall remain off the Board for one full year before being considered for board membership again. At this time, the former board member turned candidate is eligible to serve two consecutive terms again.

3.2.3 Qualifications
The Nominating/Board Development Committee shall propose a slate of members at the annual meeting of the Board upon giving due consideration the recommendations of such persons. The Board shall be comprised of members with consideration of, but not limited to, the following skills: business, development, finance, healthcare, human resources, legal, public relations and communications, and/or a general interest in cancer.

3.3 Attendance

3.3.1 In order to uphold the Duty of Care, it is expected that board members attend all regularly scheduled board meetings.

3.3.2 A board member who misses three consecutive meetings, unless excused, shall be deemed to have resigned. The office shall become vacant for the remainder of the term. The minutes should note any excused absences.

3.3.3 A board member may take a "leave of absence" for up to six months with approval from the Executive Committee. The board member must submit a request in writing with a justification for the leave. Examples of acceptable reasons for leave include but are not limited to: maternity, care for family members, personal health.

In the case of this corporation which provides services to cancer patients and loved ones, it is highly likely that board members may be dealing with their own personal health concerns and may need to take time away from the corporation to deal with them.

3.4 Nominating/Board Development

3.4.1 Board members may be reviewed and proposed by a Nominating/Board Development Committee appointed by the President/Chairman of the Board. The Nominating/Board Development Committee shall interview all board candidates and request a resume and/or application. When selecting candidates for presentation to the board, the Nominating/Board Development Committee shall give consideration to expertise, needs of the committees, demographics of the board, and other factors as deemed appropriate in addition to the candidate's commitment to the mission of the Corporation.

3.4.2 To ensure that prospective board members are fully prepared to assume their duties, board members shall receive copies of the following materials:

(1) the mission statement of the Corporation, (2) the Articles of Incorporation, (3) the Bylaws, (4) the most recent annual report, (5) financial statements including the budget and tax filings of form 990, (6) policies, (7) expectations for meeting attendance and committee work, and (8) a list of current board members with complete contact information and committee designations.

3.4.3 Upon election to the Board, new members shall have the opportunity to participate in a board member orientation.

3.4.4 The Nominating/Board Development Committee shall be responsible for the on-going training and development of the Board including an annual assessment of board performance. As such, the committee shall give consideration to board structure (board size, committees, etc.), inputs (board member skills and time), and processes (common vision, clear roles, and meeting practices).

3.5 Resignation and Vacancies

3.5.1 Resignations
A board member may resign at any time by providing written notice to the Board Chair, Secretary, or Executive Director.

3.5.2 Board Vacancies
A director elected to fill a vacancy due to resignation shall be elected for the unexpired term of the predecessor. Vacancies may be filled at any time by the affirmative vote of a majority of the remaining directors then in office, even if it is less than a quorum.

3.6 Regular Meetings

3.6.1 Regular meetings
The Board of Directors shall meet no fewer than (9) nine times, including an annual meeting.

During the formative stages of developing the corporation, the board will most likely meet monthly or perhaps more often. As the corporation becomes established, the board may elect to meet less often. For example, some corporations may choose to omit a meeting during the summer or winter seasons.

3.6.2 Definition of Annual Meeting
The annual meeting of the Board shall be the regular board meeting which occurs in April. The purpose of the meeting shall be to elect officers, board members, set the budget and calendar of meetings for the coming year, and any other business as set forth before the Board.

3.6.3 Special Meetings
The Board Chair may call a special meeting of the Board whenever deemed necessary or when requested to do so by (3) three or more directors or by the Executive Director. Notice of a special meeting shall be provided in writing to each board member at least (7) seven days in advance of the meeting.

3.6.4 Meeting Notification
The Board of Directors shall set the schedule of meetings for the coming year at the annual meeting. The schedule of meetings shall serve as proper notice. Meeting materials shall be prepared and distributed not later than the Friday before the meeting.

3.6.5 Rules of Order
Meetings shall be guided by specific parliamentary procedure as adopted by the Board of Directors.

3.7 Quorum and Voting

3.7.1 Meeting quorum
A quorum exists if 2/3 of the members of the board are present for a meeting.

3.7.2 Voting
Each member of the Board shall have (1) one vote. An action may be passed by the Board at a meeting through an affirmative vote by the majority of those present.

3.7.3 Amendment to Bylaws
The bylaws may be amended with vote of a super majority of the Board. Proposed amendments must be submitted in writing to the Board prior to the meeting in which the vote is to be held.

Article IV – Officers and Agents

4.1 Number and qualifications

The board officers shall consist of a President, President-Elect, Immediate Past President, Secretary/Treasurer.

The roles of president-elect and immediate past president provide for continuity and stability in the corporation. The immediate past president serves as a mentor to the president while the president-elect is continuously learning and preparing for the role of president.

4.2 Election and Term of Office

The Nominating/Board Development Committee shall present a slate of officers for the coming year for vote by the full board at the annual spring meeting.

4.6 Authority and Duties of Officers

4.6.1 President

The President of the Board shall serve a one-year term. The President is responsible for convening meetings and general oversight of board activities. The President appoints the Nominating/Board Development Committee and serves on the Personnel Committee.

4.6.2 President-Elect

The President-Elect shall serve a one-year term with the expectation of assuming the role of President. In the event of the prolonged absence or disability of the President, the President-Elect shall have all the authority and duties vested in the President.

4.6.3 Immediate Past President

The Immediate Past President serves on the Nominating/Board Development Committee and serves as a resource to the President. The Immediate Past President serves a one-year term of office.

4.6.3 Recording Secretary

The Secretary of the Board shall ensure that proper notice is given for meetings, and is responsible for recording and distributing minutes of meetings. In the absence of the Secretary, the President shall appoint a person to act as Secretary at a particular meeting.

4.6.4 Treasurer

The chairman of the finance committee serves as the Treasurer of the Board and as such, is a member of the Executive Committee. The Treasurer shall be responsible for submitting the annual budget for approval by the full Board. The proposed budget shall be presented for discussion at the meeting prior to the annual meeting. The budget shall be approved at the annual meeting. The Treasurer shall prepare the monthly financial reports to the Board, receive and make deposits, and make disbursements up to $1,000. Disbursements over $1,000 require the co-signature of the Board President. At the end of the term the Treasurer shall deliver to the successor all books, monies, and other property of the Corporation then in his or her possession.

Article V – Committees of the Board

5.3 The creation of committees shall be recommended by the Executive Committee to the full Board. Committees in addition to those listed below may include: program committee, resource development, public relations, and others as deemed necessary by the Board. The President of the Board may appoint committee chairs. The President of the Board may designate an ad hoc committee to carry out special projects within certain time parameters. For example, an anniversary planning committee or a long-range plans committee.

5.3.1 Executive Committee

The Executive Committee shall be comprised of the officers of the Board and the chairmen of committees. The Executive Committee has authority to exercise all the

powers and functions of the board in the management and direction of the affairs of the Corporation. The Executive Committee of the Board shall hold a minimum of (4) four meetings per year outside of the regular board meetings and shall report on such meetings at the next regular meeting of the full Board.

5.3.2 Committee Chairs

The committee chair holds the responsibility for convening meetings and ensuring that communication is upheld with the Board. The committee chair shall be appointed by the President of the Board.

5.3.3 Nominating/Board Development Committee

The Nominating/Board Development Committee shall be appointed by the President of the Board. The Nominating/Board Development Committee shall recruit, interview, and present candidates for election to the Board at the annual spring meeting of the Board. The Nominating/Board Development Committee shall be responsible for maintaining a pool of potential board members, annual assessment of board performance, and board training.

5.3.4 Audit Committee

The Audit Committee shall ensure that the financial reporting is in compliance with current statutes. The Audit Committee shall ensure that an annual audit is completed and that all tax forms are filed. Reports of the auditors and copies of tax forms shall be readily available to board members.

5.3.5 Personnel Committee

At the point in time that the Corporation shall employ an executive director and/or other staff, the Personnel Committee shall set human resources policies. The Personnel Committee shall be responsible for the hiring and annual review of the Executive Director and serves as the last point of appeal in the grievance process.

Article VI – Advisory Council

6.1 An Advisory Council may be appointed at the discretion of the President and the Executive Director to offer special expertise in the business, legal, or health aspects of dealing with cancer. The Advisory Council has no governing authority but represents interested parties who have demonstrated expertise or knowledge of the community but who may not be able to serve on a governing board for various reasons. The Advisory Council shall meet at least once per year. Otherwise, Advisory Council members may be available for consultation on an individual basis.

An advisory council is not necessary but may enable the board to fulfill its governing duties to the corporation by providing technical expertise.

Article VII – Indemnity of Officers and Directors

7.1 Each person now or hereafter a director or officer of the Corporation (and his or her heirs, executors and administrators) shall be indemnified by the Corporation to the fullest extent permitted by the laws of the Commonwealth of Virginia (See Va. Code Ann. § 13.1-702) against all claims, liabilities, judgments, settlements, costs and expenses, including all attorney's fees, imposed upon or reasonably incurred by him or her in connection with or resulting from any action, suit, proceeding or claim to which he or she is or may be made a party by reason of his or her being or having been a director or officer of the Corporation (whether or not he or she is a director or officer at the time such costs or expenses are incurred or imposed upon him or her), except in relation to matters as to which he or she shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of his or her duties as such director or officer.

7.2 Under Va. Code Ann. §13.1-697, the Corporation has the authority to indemnify an officer or director if 1) he conducted himself in good faith, and 2) he believed in the case of conduct in his official capacity with the Corporation, that his conduct was in its best interests; and in all other cases, that his conduct was at least not opposed to its best interests; and in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

If the determination as to whether a director or officer was guilty of gross negligence or willful misconduct is to be made by the Board, it may rely as to all questions of law on the advice of independent counsel. Such right of indemnification shall not be deemed exclusive of any rights to which an officer or director may be entitled by any bylaw, agreement, vote of members, or otherwise. The Corporation shall have the authority to purchase suitable policies of indemnification insurance on behalf of its officers, directors, or agents, the premiums for which may be paid out of the assets of the Corporation

Article VIII – Conflicts of Interest

8.1 Conflict Defined

A conflict of interest exists when the interests or activities of any director, officer or staff member may be seen as competing with the interests or activities of the Corporation; or the director, officer, or staff member derives a financial or other material gain as a result of a direct or indirect relationship.

8.2 Disclosure

Any conflict of interest shall be disclosed to the Board of Directors by the person who has the conflict. When the conflict relates to a matter requiring action by the Board of Directors, that person shall not participate in the discussion nor vote on the matter, but their presence may be counted if it is necessary in order to achieve the quorum.

The National Charities Information Bureau requires that nonprofit organizations adopt a policy on conflicts of interest. The duty of loyalty, as discussed earlier, demands that a director or officer of a corporation act in the best interests of the corporation. If there is a conflict with a director, they must disclose their conflict and remove themselves from any votes pertaining to the matter in conflict. This article does not necessarily need to be included in the Bylaws because it can be adopted as a policy by the Board of Directors instead.

Article IX – Account Books and Minutes

9.1 The Corporation shall keep correct and complete books and records of account and financial statements and shall also keep minutes of the proceedings of its Board of Directors and Committees. All books and records of the Corporation may be inspected by any director or his or her accredited agent or attorney, for any proper purpose at any reasonable time. The minutes will be entrusted to [a member of the Board] and will be kept [in a particular place]. In accordance with the IRS laws, the minutes will be made available to the public upon request. Additionally, the minutes will be emailed to all the Board of Directors to go over, so at the next meeting, the Board can agree to their accuracy.

The minutes will be reviewed by the board and the board must agree to their veracity because the board is ultimately responsible for the operations and governance of the corporation.

Article X – Fiscal Year and Audit

10.1 The fiscal year of the Corporation shall be January 1 though December 31, inclusive. After the close of each fiscal year of the Corporation, financial transactions of the Corporation for the preceding fiscal year shall be reviewed by certified public accountants, as directed by the Board of Directors, and a report of the review shall be made to the Board of Directors within ninety days after the close of the fiscal year.

Article XI – Loans to Directors and Officers

11.1 The law of the Commonwealth of Virginia prohibits any loans or advances, other than customary travel advances, to be made by the Corporation to any of its directors or officers.

Article XII – Amendment to Bylaws

12.1 These Bylaws may be amended or repealed in whole or in part by a supermajority vote (over two thirds) of the active members present and voting at any special or regular meeting of the Corporation, provided that 14 days notice of the proposed amendment or repeal be given in the call for such meeting.

(The ability to pass amendments to the by-laws is necessary so that your corporation will have the flexibility necessary to adjust to the organization's needs. There may be specifications for amendments in the Articles of Incorporation to allow for amendments. Rather than the

majority vote necessary to approve normal business decisions, amendment of the by-laws should require a supermajority vote in order to make sure that the organization's rules and structure cannot be altered too easily.)

Bylaws Certificate

The undersigned certifies that he/she is the Secretary of [name of corporation], a Virginia nonprofit corporation, and that, as such he/she is authorized to execute this certificate on behalf of said Corporation, and further certifies that the foregoing Bylaws, consisting of _____ (___) pages, including this page, constitute the Bylaws of the Corporation as of this date, duly adopted by the [members or directors, depending on whether articles of incorporation specify members or directors are entitled to adopt bylaws], of the Corporation at their [date] [annual, special, or regular] meeting, as amended from time to time prior to the date hereof.

Dated: [date]

[Signature of Secretary]

[Name of Secretary], Secretary

CHAPTER 4 APPENDIX: EMPLOYEE AND PERSONNEL ISSUES

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Recommended Policies and Example of an Employee Handbook[37]

1. **Employee Acknowledgement:** it is the employee's responsibility to read and understand the company's policies.

    a. Recommended that the employer set aside time for the employees to read the handbook during the orientation process. Encourage the asking of questions.

2. **Introduction to the Employee Handbook**: includes a welcoming message as well as a description of the company, its mission, values and beliefs.

    a. Provide a few key statements so that employees have the opportunity to learn about the company.
    b. Can also include additional items on the history of the company.

3. **Equal Opportunity Explanation**: incorporates a statement on the company's equal employment opportunities.

4. **General Policies**:

    a. Personal information: requirements for personnel records such as proof of identity.
    b. Attendance policy
        i. Keep in mind laws and regulations such as FMLA. Best to just include a general statement on attendance.
    c. Use of Company Property: such as copy machines, phones, supplies, etc.
        i. Permit reasonable use as long as it does not interfere with business.
        ii. Keep in mind restrictions on Internet access.
    d. Confidentiality: some companies might have a need for employees to sign a confidentiality statement as a condition to employment. Some companies only require this if the employee is privy to confidential information.
    e. Dress Code
    f. Safety and Accident rules: an employer needs to provide a safe work environment and notify the employees that it is part of their responsibility to work safely.
        i. Good idea to also have periodic training for employees on things such as escape routes and fire drills.
    g. Anti Substance Abuse
        i. This can get lengthy and technical due to the medical and legal issues involved. Best to just outline the policy in the handbook and then refer to a more complete document.
    h. Sexual Harassment: employment attorney's place this on the must have list.
    i. Smoking: consider local state laws as many have passed laws that govern the issue of smoking.

[37] Online Women's Business Center at http://www.onlinewbc.gov/docs/manage/hrpol_idx.html.

j. Performance Reviews: what employees can expect.
    i. This is essential to protecting the company in the event that an employee has to be terminated.
k. Employment Categories: where to explain who is full time, part time, etc.
    i. Critical in the determination of benefits and vacations, etc.
l. Additional Policies: can change and be added as the business grows or changes.

5. Compensation and Benefits Policies

a. Payroll: outline payroll procedures.
b. Work Hours and Reporting: outline policy when it comes to specific or flexible work hours.
c. Holidays: typically small businesses start out with unpaid time off for holidays and then gradually add paid holidays.
d. Vacation: this can be a problem for a small business with few employees.
e. Sick Leave
    i. Currently no legal requirements for paid sick leave unless the company is subject to FMLA (generally has 50 or more employees).
f. Family and Medical Leave: professional legal help may be needed for drafting of this policy.
g. Maternity Leave
h. Funeral Leave
i. Jury Duty
j. Military Service
k. Group Insurance Benefits: make a summary reference to the companies insurance benefits and eligibility, then refer the employee to the separate benefits handbook.
    i. Your chosen insurance company will either provide you with or help you prepare detailed information about benefits.
l. Short Term Disability: (if applicable)
    i. Many companies offer optional long term disability insurance and short term disability insurance covers the employee during the gap between the two insurance policies.
    ii. Companies with 15 or more employees are subject to the American's with Disabilities Act.
m. Continuation of Medical/COBRA: if your company has grown to 20 more employees the law requires that you provide continuation of health/medical benefits to employees that leave the company in most circumstances.
n. Workers Compensation: generally employers are required to have this insurance in most states.
o. Retirement Plans
    i. Keep in mind low cost options for small businesses.
p. Tuition Assistance
q. Employee Assistance Program
    i. Helps employees recognize and deal with problems in their lives.
r. Other Benefits: to be added as your company grows and changes.

Sample Job Descriptions

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XYZ Organization, Executive Director

Job Description

Staff Recruitment/Development/Supervision

Act as the staff's primary advocate for all organization issues through established staff and volunteer structures. Ensure compliance with policies and procedures. Provide staff performance management through individual goal development, constructive and continual feedback, and discipline, in accordance with established timelines. Recruit and develop individuals possessing the talent, experience, and qualifications required to meet goals and objectives as established by the Board of Directors.

Volunteer Recruitment

Ensure key volunteers attend training sessions. Ensure priority events and committees are in place within timelines. Expand organization's presence in the community through researching and developing volunteer resources for all priority initiatives. Serve as a staff resource for assigned volunteer committees and boards, and interpret policies for volunteers. Staff all operating boards; ensure adherence to operating board guidelines. Target and coordinate contacts and opportunities for all volunteers and staff.

Development

Adhere to priority special event standards and best practices. Compile accurate income projections and income reports as requested by Board of Directors. Conduct priority special event assessments in coordination with Director of Development. Ensure all priority special events are achieving benchmarks in accordance with event timelines. Lead annual goal planning and three-year planning process in all Board Committees within region. Serve as a primary staff resource for meeting major gift goals for assigned region. Work with Director of Development to identify and pursue income development opportunities.

Information Network

Ensure all activities are directly tied to organizations annual programs. Ensure all organization activities are achieving benchmarks in accordance with stated timelines. Manage all programs for the region.

Advocacy

Coordinate volunteers for information meetings. Inform others about the service of XYZ . Ensure the successful implementation of specific Area advocacy activities. Promote, coordinate, and support opportunities for active volunteer involvement in advocacy initiatives supported by

the Board of Directors. Support the meaningful dissemination of advocacy information, promote attitudes of political efficacy, and increase organizing efforts to enhance levels of participations.

Job Requirements

Bachelor's degree, and five to seven years management experience including fundraising, knowledge of volunteer recruitment, staff and volunteer training, and supervision in a related field of work, or an equivalent combination of education and experience. Demonstrated ability in fundraising, public relations, communications, project management, and community organization. Strong initiative and leadership skills; collaboration and integrated planning experience. Excellent interpersonal, written, and verbal communication skills. Demonstrated ability to influence others.
Reports to Chair of the Board of Directors.

XYZ Organization, Client Services Director

Job Description

Staff and Volunteer Relations

Provide staff and volunteers with the leadership, guidance, direction, and material resources to effectively implement organization client service programs in accordance with the overall policies, priorities, and objectives of the organization and organizational activities in the assigned area. Provide training for office staff and volunteers regarding call-in client services. Recruit, train, coordinate, motivate, and recognize volunteers for service programs. Maintain and strengthen staff and volunteer partnership team. Work with staff partners to identify and prioritize volunteer needs. Develop and implement systems/tools for aiding in volunteer retention, and quality of service offered by volunteers. Recruit, train, empower, and guide community volunteer committees to effectively achieve client service goals as determined annually.

Client Services

Acquire intimate knowledge of community resources; identify centers of influence. Answer client service policy questions (e-mail, phone, fax) using provided resources. Establish volunteer group to conduct outreach to providers to increase numbers of clients served. Maintain focus on region/area program of work.

Job Requirements

Bachelor's Degree in Social Work, Public Health, Law, Public Administration, or related field; or a combination of education and experience. Demonstrated ability to work with individuals from all walks of life including clients, family members, professionals, social workers, and volunteers. Excellent verbal and written communication skills. Experience in volunteer management and social work. Moderate travel within assigned geographic area. Reports to Executive Director.

XYZ Organization, Director of Development

Job Description

Staff Development

Ensure compliance with organizations policies and procedures. Deliver training related to donor identification and development to staff and volunteers as needed.

Development

Ensure that assigned areas continuously build capacity to increase and sustain growth in giving through assigned staff and volunteers. Ensure the successful implementation of all activities related to Development. Implement business methodologies for achievement of all Development goals and objectives. Identify and build relationships with prospective donors who have potential interest in supporting the organization. Qualify prospects and leads utilizing timely follow-up process including direct personal visitation, telephone, and other correspondence. Secure gift commitments. Assist in evaluating the acceptance of potential gifts including non-cash gifts of tangible or real property. Proven record of writing grant proposals a must. Reports to Executive Director.

Job Requirements

Bachelor's degree, and three years experience in Development, or an equivalent combination of education and experience. Demonstrated excellence in sales. Demonstrated excellence in cultivating and building relationships. Demonstrated knowledge of Development gift vehicles and methodologies. Demonstrated knowledge of tax laws (state and federal) and legal aspects related to charitable giving. Demonstrated ability to influence community and business leaders through strong presentation skills. Demonstrated excellence in interpersonal, written and verbal communication skills. Demonstrated strong initiative and leadership skills; collaboration and integrated planning experience. Demonstrated ability to interact and build relationships with people at all levels of society. Ability to adapt to changing environment.

XYZ Organization, Finance Director

Job Description

The Finance Director is responsible for providing the organization with budget development, fiscal oversight, financial reporting and bookkeeping, and for developing and maintaining efficient and effective fiscal operations and procedures. The Finance Director works under the direct supervision of the Executive Director.

A. Responsibilities

1. Fiscal Operations and Oversight

• Work closely with the Executive director to oversee the annual budget, including developing, revising, and reporting on the budget,
• Provide leadership in the development of budgets,
• Maintain and continually improve a fiscal operations system that reflects and accommodates for organizational financial complexity and that supports the development and management of budgets and production of reports and analyses, and
• Be responsible for proactive communication and reporting on fiscal matters to Executive Director.

2. Reporting

• Prepare timely and accurate monthly profit & loss and balance sheet reports for the Executive Director,
• Prepare financial reports for the Board of Directors, as guided and directed by the Executive Director,
• Prepare other financial multi-year financial projections as needed and directed, and
• Prepare financial analyses as needed and directed.

3. Bookkeeping and Accounting

• Reconcile all accounts and allocate all expenses,
• Oversee payroll process,
• Maintain financial procedures and controls for fiscal operations and ensure appropriate controls and security are in place,
• Work with out side auditor to prepare and complete annual audit in a timely manner; maintain organized records to ensure fiscal accountability, and
• Other assigned duties as required.

B. Qualifications

1. Strong fiscal management skills
2. Three to five years experience
3. Knowledge of nonprofits and tax law

4. Bachelor's degree in accounting, and/or related experience, CPA preferred.
5. Strong organizational skills.

Where to Advertise

Position descriptions can be publicly advertised in the Help Wanted section of The Roanoke Times newspaper (www.roanoke.com). In addition to publicly soliciting volunteer assistance, you may also find the following resources helpful channels for reaching prospective volunteer workers:

United Way of Roanoke Valley
www.uwrv.org

The United Way, in partnership with the Council of Community Services, a United Way Partner Agency, maintains several large on-line databases listing numerous volunteer opportunities in the Roanoke region. These databases include the "Volunteer Roanoke Valley" (http://www.councilofcommunityservices.org/vrv/vrv.htm), and "The Retired and Senior Volunteer Program" (http://www.councilofcommunityservices.org/rsvp/rsvp.htm)—excellent Resources for organizations seeking to be matched with volunteer assistants.

Points of Light Foundation & Volunteer Center National Network
www.pointsoflight.org

The Points of Light Foundation (Foundation) is a nonpartisan and nonprofit organization that supports and organizes the vital work of community volunteers who help serious social problems by bringing people and resources together. The Foundation raises public awareness about the urgent need to solve serious social problems through volunteering; builds knowledge, skills and programs for volunteers to succeed; and provides leadership to mobilize volunteers in thousands of local communities across the country. The Foundation has organized the following volunteer resources:

Corporate Volunteer Councils (CVCs)
CVCs are local business networks of workplace volunteer program managers bringing area business people together to share, learn and participate in volunteering with one another. Currently, nearly 100 CVCs exist across the United States, and it is estimated that over 2,500 businesses are members of this CVC network. Typically, CVCs are affiliated with local nonprofit organizations such as Volunteer Centers or United Way agencies while some councils are incorporated as freestanding nonprofit organizations. To learn more about CVCs in the Roanoke area, email CVC@PointsofLight.org (note: the United Way of Roanoke Valley is one participating organization).

Connect America
Connect America, an initiative of the Foundation, is a national partnership of diverse nonprofit organizations, businesses, civic associations, fraternal organizations,

communities of faith, and government agencies—working in collaboration to leverage knowledge, resources and volunteers to address social and community problems. For more information, email ConnectAmerica@PointsofLight.org.

Volunteer Centers

Volunteer Centers mobilize people and resources to deliver creative solutions to community problems. A Volunteer Center is a convener for the community, a catalyst for social action and a key resource for volunteer involvement. The Volunteer Center's core identity is centered around bringing people and community needs together through a range of programs and services. The Volunteer Center's role is not to replace other agencies or organizations within the community, but rather to bridge the gap in services provided by agencies. To find the Volunteer Center in the Roanoke community, call or visit 1-800-VOLUNTEER.org or call Volunteer Roanoke Valley at 540-985-0131 ext. 501.

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EXAMPLE OF EMPLOYEE HANDBOOK

XYZ Organization, Inc.[38]
EMPLOYEE HANDBOOK

This employee handbook has been prepared for your information and understanding of the policies, philosophies and practices and benefits of XYZ Organization. PLEASE READ IT CAREFULLY. Upon completion of your review of this handbook, please sign the statement below, and return to your personnel representative by the due date. A reproduction of this acknowledgment appears at the back of this booklet for your records.

I, _____, have received and read a copy of the XYZ Organization (The Organization) Employee Handbook which outlines the goals. policies, benefits and expectations of The Company, as well as my responsibilities as an employee.

I have familiarized myself, at least generally, with the contents of this handbook. By my signature below, I acknowledge, understand, accept and agree to comply with the information contained in Employee Handbook provided to me by The Organization. I understand this handbook is not intended to cover every situation which may arise during my employment, but is simply a general guide to the goals, policies, practices. benefits and expectations of The Organization.

I understand that The Organization Employee Handbook is not a contract of employment and should not be deemed as such, and that I am an employee at will.

_____
(Employee signature)

Please return by: _____
(put date here)

[38] Online Women's Business Center at http://www.onlinewbc.gov/docs/manage/hrpol_idx.html.

XYZ Organization, Inc.
EMPLOYEE HANDBOOK

Dear Employee,

Welcome to XYZ Organization!

We are excited to have you as part of our progressive team. You were hired because we believe you can contribute to the achievement of our goals and to the bottom line of success, and share our commitment to our mission statement.

XYZ is committed to distinctive quality and unparalleled customer service in all aspects of our business. As part of the team, you will discover that the pursuit of excellence is truly a rewarding aspect of your career with XYZ.

This employee handbook contains the key policies, goals, benefits, and expectations of XYZ Organization; and other information you will need as part of our team.

> ***Our mission statement:***
> *At XYZ, we pledge to provide distinctive quality and unparalleled customer service as we strive to gain the respect and trust of our customers, suppliers and partner vendors.*

The success of XYZ is determined by our success in operating as a unified team. We have to earn the trust and respect of our customers every day in order that the customer make the decision to choose our services. We sell service and service is provided by people. There are no magic formulas.

Our success is guaranteed by creative, productive employees who are empowered to make suggestions while thinking "outside the box." Your job, every job, is essential to fulfilling our mission to "provide distinctive quality and unparalleled customer service" everyday to more people who "trust and respect" us. The primary goal at XYZ, and yours, is to live our mission statement and continue to be an industry leader. We achieve this through dedicated hard work and commitment from every employee.

You should use this handbook as a ready reference as you pursue your career with XYZ. Additionally, the handbook should assure good management and fair treatment of all employees. At XYZ, we strive to recognize the contributions of all employees.

Welcome aboard. We look forward to your contribution.

Sincerely,

PURPOSE OF THIS HANDBOOK

This Handbook contains official policies of XYZ Organization, as of April 22, 2005, superseding all other statements of policy including handbooks prepared and distributed by any department of organization.

This Handbook is provided for guidance only, and is not meant to create a binding contract. Policies are under continuous review and are subject to change without notice.

For further details on current personnel policies and employee benefits, contact the Human Resource Department. Employees should not rely on oral statements by supervisors or other persons concerning policies, benefits or conditions of employment.

Equal Opportunity

XYZ Organization, Inc. is an Equal Opportunity Employer. This means that we will extend equal opportunity to all individuals without regard for race, religion, color, sex, national origin, age, disability, handicaps or veterans status. This policy affirms XYZ's commitment to the principles of fair employment and the elimination of all vestiges of discriminatory practices that might exist. We encourage all employees to take advantage of opportunities for promotion as they occur.

Personnel Records

It is important that the personnel records of XYZ be accurate at all times. In order to avoid issues or compromising your benefit eligibility or having W2's returned, XYZ expects that employees will promptly notify appropriate personnel representative of any change in name, home address, telephone number, marital status, number of dependents, or any other pertinent information which may change.

Attendance

Employees are expected to arrive at work before they are scheduled to start and be at their work station productively engaged in XYZ business by the scheduled start time. All time off must be requested in advance and submitted in writing, as outlined in the appropriate categories; except sick leave. See Sick Leave and other categories for specific details.

XYZ views attendance as one of the most important facets of your job performance review. All unapproved absences will be noted in the employee's personnel file. Excessive absences, including for Sick Leave, will result in disciplinary action, up to and including termination.

Equipment

XYZ will provide you with the necessary equipment to do your job. None of this equipment should be used for personal use, nor removed from the physical confines of XYZ - unless it is

approved and your job specifically requires use of organization equipment outside the physical facility of XYZ.

Computer equipment, including laptops, may not be used for personal use - this includes word processing and computing functions. It is forbidden to install any other programs to a organization computer without the written permission of the department head. These forbidden programs include, but are not limited to, games, online services, screen savers, etc. The copying of programs installed on the organization computers is not allowed unless you are specifically directed to do so in writing by your supervisor.

The telephone lines at XYZ must remain open for business calls and to service our customers. Employees are requested to discourage any personal calls - incoming and outgoing - with the exception of emergency calls. No long distance calls are to be made on organization phones which are not strictly business related.

Confidentiality

XYZ requires all employees to sign a confidentiality agreement as a condition of employment, due to the possibility of being privy to information which is confidential and/or intended for the organization use only. All employees are required to maintain such information in strict confidence. This policy benefits you, as an employee, by protecting the interests of The Organization in the safeguard of confidential, unique and valuable information from competitors or others.

Should an occasion arise in which you are unsure of your obligations under this policy, it is your responsibility to consult with your reporting manager. Failure to comply with this policy could result in disciplinary action, up to and including termination.

Dress Code

As an employee of XYZ, we expect you to present a clean and professional appearance when you represent us, whether that is in, or outside of, the office. Management, sales personnel and those employees who come in contact with our public, are expected to dress in accepted corporate tradition. A specific list of suggested do's and definite don'ts, including a specific definition of business casual, is available from your personnel representative and will be posted in each work area.

It is just as essential that you act in a professional manner and extend the highest courtesy to co-workers, visitors, customers, vendors and clients. A cheerful and positive attitude is essential to our commitment to extraordinary customer service and impeccable quality.

Safety and Accident Rules

Safety is a joint venture at XYZ. XYZ provides a clean, hazard free, healthy, safe environment in which to work in accordance with the Occupational Safety and Health Act of 1970. As an employee, you are expected to take an active part in maintaining this environment. You should

observe all posted safety rules, adhere to all safety instructions provided by your supervisor and use safety equipment where required. Your work place should be kept neat, clean and orderly. It is your responsibility to learn the location of all safety and emergency equipment, as well as the appropriate safety contact phone numbers. A copy of the Emergency Procedures will be kept in each work area on top of the supervisor's desk.

All safety equipment will be provided by XYZ, and employees will be responsible for the reasonable upkeep of this equipment. Any problems with or defects in, equipment should be reported immediately to management.

As an employee, you have a duty to comply with the safety rules of XYZ, assist in maintaining the hazard free environment, to report any accidents or injuries - including any breaches of safety - and to report any unsafe equipment, working condition, process or procedure, at once to a supervisor.

Employees may report safety violations or injuries anonymously to the Safety Committee, if they are not the injured or violating party. NO EMPLOYEE WILL BE PUNISHED OR REPRIMANDED FOR REPORTING SAFETY VIOLATIONS OR HAZARDS. However, any deliberate or ongoing safety violation, or creation of hazard, by an employee will be dealt with through disciplinary action by XYZ, up to and including termination.

All work related accidents are covered by Worker's Compensation Insurance pursuant to the laws of the various states in which we operate.

Anti-Substance Abuse

XYZ takes seriously the problem of drug and alcohol abuse, and is committed to provide a substance abuse free work place for its employees. This policy applies to all employees of XYZ, without exception, including part-time and temporary employees.

No employee is allowed to consume, possess, sell or purchase any alcoholic beverage on any property owned by or leased on behalf of XYZ, or in any vehicle owned or leased on behalf of XYZ. No employee may use, possess, sell, transfer or purchase any drug or other controlled substance which may alter an individuals- dual's mental or physical capacity. The exceptions are aspirin or ibuprofen based products and legal drugs which have been prescribed to that employee, which are being used in the manner prescribed.

XYZ will not tolerate employees who report for duty while impaired by use of alcoholic beverages or drugs.

All employees should report evidence of alcohol or drug abuse to a supervisor or a personnel representative immediately. In cases where the use of alcohol or drugs pose an imminent threat to the safety of persons or property, an employee must report the violation. Failure to do so could result in disciplinary action for the non-reporting employee.

Employees who violate the Anti-Substance Abuse Policy will be subject to disciplinary action, including termination. It is our policy at XYZ to assist employees and family members who suffer from drug or alcohol abuse. You may be eligible for a medical leave of absence, and we encourage any employee with a problem to contact your personnel representative for details.

As a part of our policy to ensure a substance abuse free workplace, XYZ employees may be asked to submit to a medical examination and/or clinically tested for the presence of alcohol and/or drugs. Within the limits of federal and state laws, we reserve the right, at our discretion, to examine and test for drugs and alcohol. Some such situations may include, but not be limited, to the following:

1. All employees who are offered employment with XYZ;
2. Where there are reasonable grounds for believing an employee is under the influence of alcohol or drugs;
3. As part of an investigation of any accident in the workplace in which there are reasonable grounds to suspect alcohol and/or drugs contributed to the accident;
4. On a random basis, where allowed by statue;
5. As a follow-up to a rehabilitation program, where allowed by statute;
6. As necessary for the safety of employees, customers, clients or the public at large, where allowed by statute; and
7. When an employee returns to duty after an absence other than from accrued time off such as vacation or sick leave.

This is only a summary of XYZ's Anti-Substance Abuse Policy. You have been provided, and are required to read, the full policy. The full policy goes into greater detail and includes such subjects as definitions, testing methods, consequences of testing refusal, confidentiality, rights of employees and The Organization, appeal procedures, notice of applicable statutes, voluntary assistance, etc. It is your responsibility to obtain a copy from your personnel representative if one has not been provided to you. You will be required to sign a consent form agreeing to XYZ's Anti-Substance Abuse Policy in full.

It is a condition of your continued employment with XYZ that you comply with the Anti-Substance Abuse Policy. NOTHING IN THE ANTI-SUBSTANCE ABUSE POLICY SHALL BE CONSTRUED TO ALTER OR AMEND THE AT-WILL EMPLOYMENT RELATIONSHIP BETWEEN XYZ AND ITS EMPLOYEES.

Sexual Harassment

XYZ Organization will not, under any circumstances, condone or tolerate conduct which may constitute sexual harassment on the part of its management, supervisors or non-management personnel. It is our policy that all employees have the right to work in an environment free from any type of illegal discrimination, including sexual harassment. Any employee found to have engaged in such conduct will be subject to immediate discipline up to and including discharge.

Any employee found to be engaged in the conduct of sexual harassment will be subject to immediate discipline up to and including discharge.

Sexual harassment is defined as:

1. Making submission to unwelcome sexual advances or requests for sexual favors a term or condition of employment;
2. Basing an employment decision on submission or rejection by an employee of unwelcome sexual advances, requests for sexual favors or verbal or physical contact of a sexual nature;
3. Creating an intimidating, hostile or offensive working environment or atmosphere either by

    a) verbal actions, including calling employees by terms of endearment; using vulgar, kidding or demeaning language; or
    b) physical conduct which interferes with an employee's work performance.

We, at XYZ, do encourage healthy fraternization among its employees; however, employees, especially management and supervisory employees, must be sensitive to acts of conduct which may be considered offensive by fellow employees and must refrain from engaging in such conduct.

It is, also, expressly prohibited for an employee to retaliate against employees who bring sexual harassment charges or assist in investigating charges. Retaliation is a violation of this policy and may result in discipline, up to and including termination. No employee will be discriminated against, or discharged, because of bringing or assisting in the investigation of a complaint of sexual harassment.

Smoking Policy

XYZ endeavors to provide a healthy environment, therefore prohibits any form of tobacco consumed in organization buildings. Additionally, no smoking is allowed within ten (10) feet of exterior entranceway s.

Job Objectives, Performance Reviews, Salary Reviews

Within one week of employment, job change or promotion, every employee will be given job objectives which detail the requirements and expectations of the position for which the employee was hired. XYZ will measure your job performance against these objectives. After every evaluation, job objectives will be re-dated and reviewed, if no changes are made; or rewritten as appropriate. In either case, the reporting supervisor review and discuss the objectives with the employee and the employee will sign a statement indicating agreement with, and understanding of, these objectives.

Performance reviews are normally conducted every six (6) months from the date of hire, with the exception of a three month review at the end of your probationary period. All performance reviews are based on merit, achievement, job description fulfillment and performance at your position. Wage increases will be based upon this review, as well as past performance improvement; dependability; attitude; cooperation; any necessary disciplinary action; adherence

to all employment policies; and your position in your salary range. Your reporting supervisor will review and discuss your salary range and your position within that range during your performance reviews. When you are promoted to a higher level position, you are automatically eligible for an increase as dictated by the salary range of that position.

Employment Categories

Permanent Full-Time is an employee who has no termination date and who is regularly scheduled to work 37.75 to 40 hours per week.

Permanent Part-Time is an employee whose position has no termination date and who is scheduled to work 20 or more hours, but less than 37.75 hours per week.

Temporary Full-Time is an employee who is hired or promoted for certain length of time and who is scheduled to work 37.75 hours per week.

Temporary Part-Time is an employee who is hired or promoted for a certain length of time and who is scheduled to work 20 hour or more, but less than 37.75 hours per week.

Eligibility for Overtime Pay under the Fair Labor Standards Act.

The Fair Labor Standards Act of 1938 (FLSA) established the expectation that American workers would have a normal workweek of 40 hours. For most workers, it guarantees the right to overtime pay—"time and a half"—for each hour beyond 40 worked in a week. In 1999, the U.S. Department of Labor estimated that almost 80% of the nation's 120 million wage and salary workers were entitled to overtime protection under the FLSA.[1]

Section 13(a)(1) of the FLSA states that the obligation of employers to pay an overtime pay premium (or even the minimum wage) for each hour beyond 40 worked per week does not apply to "any employee employed in a bona fide executive, administrative, or professional capacity." The regulations to implement that exemption have been in place since 1940, with few significant changes, except to the dollar amount of the salary-level test.

Qualifying for exempt status generally requires meeting three tests: (1) the amount of salary paid must meet minimum specified amounts (the "salary-level test"); (2) the employee must be paid a predetermined and fixed salary, not an hourly wage that is subject to reductions because of variations in the quality or quantity of work performed (the "salary basis test"); and (3) the employee's job duties must primarily involve managerial, administrative, or professional skills as defined by FLSA regulations (the "duties tests").

On March 31, 2003, the Department of Labor's Wage and Hour Administrator issued a Notice of Proposed Rulemaking to change the regulations governing the right to overtime pay for "white-collar" employees. [39]

[39] Economic Policy Institute-Eliminating the Right to Overtime Pay at http://www.epinet.org/content.cfm/briefingpapers_flsa_jun03.

Payroll

XYZ employees are paid bi-weekly. Our payroll process includes:

Direct Deposit
While an employee can certainly have his/her actual pay check delivered direct to their desk each pay period, XYZ provides, and encourages, direct deposit of paychecks. This is a service which saves you time and provides added security. With this option, each paycheck will be automatically deposited to your checking or savings account (or divided between the two) as your direct. Each pay day, you still receive a pay stub for your records -- much like a voided check with all the same information which would appear on your regular check -- except the face of the check is voided. No trips to the bank are necessary because your salary appears in your bank account on payday, or in some cases the night before. Direct Deposit will be initiated one pay period following the receipt of the signed authorization form from the employee.

Payroll Deductions
As required by law, XYZ will deduct Federal Social Security and Income Tax from your payroll check each pay period. Group Insurance premiums for eligible employee and dependent family members will be deducted from payroll check each pay period, once the employee completes the appropriate authorization forms.

Work Hours and Reporting

Workday
The normal workday is eight (8) hours for non-exempt, with 40 hours being a normal work week. Exempt employees generally work the same hours, but may be required to work more hours as the work dictates. While you are generally expected to work the number of hours stated above, XYZ does not guarantee that you will actually work that many hours in any given day or week (or to be paid for such hours if you do not work that many hours).
Overtime work is only performed when necessary and approved in advance by your department head. You are expected to work necessary overtime when requested to do so, and non-exempt employees will receive time and one-half pay for time worked exceeding 40 hours in any given work week. Full time employees will be paid double time for hours worked on a organization holiday, if they are not scheduled to work on that holiday. Part-time employees will be paid one and one-half times the regular rate of pay for working on a organization holiday. Exempt employees are not entitled to overtime pay. All overtime payments will be made in the pay period following the period the overtime was worked.

Time Clock and Time Cards
Where applicable, XYZ employees must punch in before beginning their work shift and punch out at the end of their shift. All such employees are expected to work their entire shift. Any such employee punching five (5) minutes late will be docked fifteen (15) minutes of pay, or punches out later than the time their scheduled shift ends, without prior authorization, will be paid for the scheduled time only. Any digression from the above requirements could result in a reprimand to the employee.

You are not allowed to punch the time clock of another employee. Should your time card be incorrectly punched, for any reason, your supervisor will note the correct start and/or end time, and initial the correction. All time cards must be approved by your supervisor.

For employees required to complete time cards, the cards must be filled out with all hours worked and turned into your supervisor every other Friday as designated by XYZ, by 9:30 A.M. Vacations days, sick days, holidays, and absences such as jury duty, funeral leave or military training, must be specifically noted on the time cards for days on which they occur. Vacation and holidays should be counted as full work days. All time cards must be approved and signed by your supervisor prior to being sent to personnel.

Holidays

XYZ RECOGNIZES THE FOLLOWING HOLIDAYS: NEW YEARS DAY, GOOD FRIDAY, MEMORIAL DAY, INDEPENDENCE DAY, LABOR DAY, THANKSGIVING, CHRISTMAS AND TWO FLOATING HOLIDAYS.

When a holiday falls on a weekend, XYZ will designate the Friday preceding or Monday following as the observed holiday at the discretion of The Organization. Regular full-time employees are paid eight (8) hours for each holiday, regular part-time employees are paid for holidays based upon the number of hours they are normally scheduled. Temporary employees are not paid for holidays, unless they are specifically requested to work on the designated holiday (see Overtime).

The two (2) floating holidays are available to all full-time employees beginning the first of January following the employees first anniversary. Once eligible, the floating holiday are available annually. Floating holidays must be scheduled with, and approved, by your supervisor at least three (3) weeks in advance of the requested date, and may not be taken consecutively. Floating holidays may not be carried forward to be used in the following year.

Vacation

After December 31st, XYZ full-time employees are entitled to one paid day of vacation for each month or partial month of service during the previous year, up to a maximum of 10 working days during the first five (5) years. Part-time employees will receive prorated paid vacation hours based on the regular number of hours worked against an eight (8) hour work day.

Example: If you started work on June 16, 1997, you are entitled to seven (7) vacation days in 1998. Each calendar year succeeding the first year of service, XYZ employees receive ten (10) vacation days per year, earned on a monthly basis. In January following the fifth (5th) year of service, employees receive fifteen (15) vacation days, credited monthly, based on a twelve month calendar. In January, following the tenth (10th) year of service, each employee receives twenty (20) vacation days.

Example: The same employee who started on June 16, 1997, is entitled to ten (10) days in 1999 and twenty (20) days in 2008.

Vacation is earned and credited on January 1st of each year, is available for use after March 31st for vacation credited for the current year; and available immediately for vacation carried over from the previous year. Only up to five (5) days of vacation may be carried over into the next year.

A vacation schedule of all employees is to be completed for each department or location, by January 31st of each year, Changes may be made to the schedule with three weeks notice and the approval of the supervisor of the department. The vacation request change must be submitted in writing to the supervisor three weeks prior to the anticipated vacation date.

Every effort will be made by XYZ to accommodate vacation requests, unless business circumstances do not permit. Vacation may be taken in full or half days only.

Employees who resign in good standing and give proper notice of termination, are entitled to receive payment for accrued vacation, not yet taken. If the employee has taken more vacation than actually accrued at the time of resignation, the unearned vacation will be deducted from the employee's final pay check. Employees who terminate with less than 6 months service are not eligible to be paid for accrued vacation.

Sick Leave

XYZ provides payment of income (sick leave) for eligible employees when that employee is away from work due to illness. Employees will be eligible for sick leave after completion of 90 calendar days of service, and if the work at least thirty (30) hours per week. Sick leave is payable the same as the employee's regular salary, and is subject to the same withholding elections. Sick leave will be accrued at the rate of a half (1/2) day for each month of service for eligible employees. The balance of unused, but accrued, sick leave days will be carried forward from one year to the next, up to a maximum of 30 days. All sick leave used by employees will be charged against the employee's total sick leave balance. Employees eligible for retirement from XYZ will be paid for all accrued, but unused, sick leave if the total is greater than 25 days.

Any employee that is out on sick leave longer than two days, must return to work with a doctor's certificate stating the nature of the illness and the employee's fitness to return to duty.

If an employee is unable to work due to illness, the employee must notify his immediate supervisor as soon as possible after the onset of the illness, and certainly by the time the employee was to report to work. It is not permissible to be gainfully employed elsewhere while out on sick leave. Any employee doing so will be considered to have voluntarily quit without notice and to not be in good standing at the time of resignation.

Sick leave may be taken in hourly increments for non-exempt employees, while exempt employees will be charged for sick leave for full day absences only, as exempt employees are not paid for overtime.

XYZ permits use of available sick leave for use during absence due to the birth or adoption of a child to an employee. The sick leave will be in addition to other available time (see Maternity section).

Industrial accidents and illness are covered by Worker's Compensation Insurance pursuant to the requirements of the laws in the various states in which XYZ operates. The sick leave policy outlined above does not apply to those illnesses or injuries that are covered by an applicable worker's compensation policy.

Family Medical Leave Act

XYZ has a Family and Medical Leave Policy that is in compliance with The Family and Medical Leave Act of 1993 (FMLA), which is unpaid leave absence. Eligible employees must be employed by XYZ at least twelve (12) months (but this period need not be consecutive) and have worked at least 1250 hours of service during the twelve month period prior to the request. XYZ locations with less than 50 employees within a seventy-five mile radius is not covered under this leave policy or the FMLA. Forms for leave requests are available from your personnel representative.

Under the Leave Policy a total of up to twelve (12) weeks unpaid leave of absence is available to eligible employees under the following circumstances:

- The birth of a child, but only within the first twelve months of the birth. This may not be used in conjunction with the Maternity Leave policy or the Sick Leave exception policy regarding maternity.
- The placement of a child for adoption or other legal placement, within the first twelve months of the adoption or placement.
- The need to care for a dependent, spouse or parent who has a serious medical condition.
- The serious health condition of the requesting employee, which renders the employee unable to perform the functions of his/her position.
-

During the unpaid leave, employees retain the same medical and dental coverage and must still contribute the same amount toward medical benefits as he/she paid before the leave began. (See benefits exception below) Upon return to XYZ at the end of the leave, the employee will be restored to his/her former position with the same rights, benefits, pay and other terms and conditions which existed prior to the leave; or to an equivalent position with equivalent rights, benefits, pay and other terms and conditions of employment.

The Organization reserves the right to deny leave reinstatement to key employees, where such denial is necessary to prevent substantial and grievous economic injury the organization's operations. Key employees will be notified of the organization's intention to deny reinstatement as soon as a determination is made that such injury would occur. In the event such employee decides not to return to work from unpaid leave, he/she will remain on leave for the balance of the leave period and then be terminated. Key employees are defined as the highest- paid ten percent of employees employed by the organization within seventy-five mile radius of the facility where the employee is employed.

Employees will be required to use all accrued vacation and floating holidays prior to being granted unpaid leave as outlined above for the birth or placement of a child, or to care for a seriously ill family member. The birth parent may choose to use the unpaid twelve week leave or to utilize the 6 week paid maternity leave, but cannot use both. If the employee requests the leave due to his/her own serious health condition, the employee may also be eligible for sick leave pay or short term disability payments if the condition of the leave meets the qualifications of those plans.

Employees requesting leave for their own or an eligible family member's serious health condition, will be required to provide medical certification. Medical certification must be provided thirty (30) days in advance of the request for leave when possible.

XYZ may, at its discretion, require a second medical opinion on the health condition and periodic recertification s at The Organization's expense.

Other exceptions/provisions:

- When both spouses work for XYZ, their aggregate leave in any twelve- month period may be limited to twelve weeks total, if the leave is taken for the birth or adoption of a child.
- Intermittent or reduced leave may be taken in case of a serious health condition, either an employee's own or that of a child, spouse or parent, when medically necessary. The birth or placement of a child does not qualify for intermittent or reduced leave.
- Employees out on unpaid leave will be required to contact their super- visors, at least every four (4) weeks, to report on their status and intention to return to work at the end of their leave.
- Benefits based on an accrual basis (e.g. vacation, sick leave, floating holidays, etc.) will not accrue during unpaid leave under this policy.
- While on unpaid leave, an employee will not accrue seniority or service time for eligibility for a performance review, salary review, salary review, adjustment or bonus.
- Employment benefits which are accrued prior to the unpaid leave will not be lost.
- As previously stated, group health insurance will continue on the same basis as prior to the leave, as long as the employee continues to pay his/her contribution as required before the unpaid leave.
- An employee on leave for his/her own serious health condition, will be required to provide certification from his/her health care provider that the employee is able to return to work and perform all of the functions of the job to which the employee is returning.

Maternity Leave

XYZ employees are allowed up to six (6) weeks of leave after they have given birth to or following the adoption of a child. During this time, such employees will be paid at 70% of their regular salary. Additional time may be allowed under extraordinary circumstances (see Sick Leave) and with the permission of your supervisor and department head.

Funeral Leave

XYZ allows three (3) days off, with pay, for a death in your immediate family. Immediate family includes parents, spouse, children, brothers, sisters, mother-in-law, father-in-law, grandparents, or grandchildren.

You may request up to an additional two (2) days, which must be approved by your immediate supervisor and the department head. If accrued vacation is available, this benefit will be used for the additional two days; otherwise, the additional two days will be unpaid.

Funeral leave for death of other than immediate family must be approved by your immediate supervisory and the department head. Absence for such a death is limited to two (2) days and will be unpaid.

Jury Duty

We, at XYZ, support employees called to fulfill their civic duty to serve jury duty when called. You must provide your immediate supervisor with a copy of your jury summons as immediately, as possible, upon receiving the summons. Your regular salary will continue as before jury duty for each day served, up to 40 hours per week, for a maximum of four (4) weeks.

Adequate proof of service must be provided in order to receive your regular salary during your absence for jury duty. When you return to work, you should provide your immediate supervisor with verification from the court of the number of days you served on the jury, and the amount that you were paid per day.

If the amount you are compensated by the court, per day, exceeds twenty ($20) dollars per day, your regular pay will be offset by the excess amount. Extenuating circumstances, which would cause this deduction to become a penalty, must be discussed with and approved by your immediate supervisor. If you are released from jury duty with at least four (4) hours remaining in your work day, you should return to work for the remainder of the day.

Should extraordinary circumstances exist, at the time of your call to jury duty, which would make your absence severely detrimental to the operation of our organization, we reserve the right to contact the court to request that your service be postponed.

Military Service

XYZ proudly grants time off work for employees in the military reserve training program.

After six (6) consecutive months of employment with XYZ, an employee will receive one week's base regular pay for the two week period he/she is away serving reserve duty. You may elect to utilize accrued vacation for the second week you are away at training, if desired. If he/she is employed less than six (6) months, leave will be granted without pay for the time away for reserve duty.

All employees in the military reserve training program should provide a copy of their report orders to their immediate supervisor as immediately as possible.

Insurance Benefits

XYZ Organization (The Organization) makes health insurance, life insurance and accidental death coverage (group benefits) available to eligible employees (see definitions) and their eligible family members. The Organization pays the majority of the premiums for the group benefits, with the employee sharing the balance of the cost. Single and family plans are set at different contribution rates. Long term disability benefits are also offered at no cost to employees.

The low cost of these benefits is an important part of each eligible employee's compensation package. Eligible employees may also purchase optional life insurance for spouses and dependents.

Eligible employees are all full-time employees who have completed ninety (90) calendar days of employment; and part-time employees who work at least twenty-five (25) regular hours a week and have completed ninety (90) calendar days of employment.

Specific details on coverage and benefits are outlined in XYZ's Health Benefit Handbook. It is provided to you during employee orientation. You will also receive authorization forms for all benefits at orientation. Please see your personnel representative if you have not been scheduled for orientation or have not received the Benefit Handbook.

Short-term Disability

Short term disability (STD) benefits provide income continuation during periods of serious illness resulting in total disability. You are "totally disabled" if you are unable to perform your job due to major illness or accidental bodily injury. XYZ employees bear no cost for this plan benefit which provides up to 180 days of short term disability benefits within a twelve-month period.

The employee's total disability period must exceed ten (10) consecutive working days to qualify for STD benefits; and all Sick Leave benefits must be exhausted before an employee can request STD benefits. Once the initial ten (10) day waiting period is met, STD benefits will be retroactive to the first unpaid day of absence (if sick leave benefits are exhausted).

Regular full-time and regular part-time employees of XYZ are eligible for this benefit once they have completed ninety (90) calendar days of service and work at least thirty (30) days per week on a regular basis.

Under STD benefits, eligible employees are paid 80% of their normal base salary. This means the employee will be paid based upon your regular rate of pay excluding overtime, bonus, vacation, and any other accrued paid leave or additional compensation. STD benefits may not exceed 80% of your base salary, unless augmented by available accrued vacation. If additional

payments from worker's compensation or state disability, while you are on STD benefits, increase your overall benefits to exceed 80%, your STD benefits will be reduced accordingly.

Group health benefits will continue on the same basis as prior to the onset of STD benefits. STD benefits will be subject to all payroll withholding elections of the employee which were in effect prior to the short term disability.

It is important that an employee provide their supervisor with the treating doctor's statement as soon as you know an illness or injury will result in an absence greater than ten (10) days. The doctor's statement must identify the nature of your disability and the date you are expected to be able to return to work. XYZ may require a second medical opinion, at its own expense, and periodic recertification s. If there are discrepancies in the first and second opinions, we may require a third doctor to render a medical opinion. This third doctor will be selected jointly by XYZ and the employee, and the third opinion will be binding both on us and the employee.

Upon returning to work, you must provide a release, or return to work form, from the doctor treating your illness or injury.

Continuation of Medical/COBRA

Upon termination from XYZ for any reason other than gross misconduct, an employee may elect to continue group medical coverage at group rates as long as the employee pays the required monthly premium. It is also possible to convert other group plans to individual plans. Details on the conversion of any benefits will be discussed with you at the time of your termination by a personnel representative. You may, of course, request information on this subject at any time prior to actual termination.

Worker's Compensation

Employees who are injured on the job at XYZ are covered by Worker's Compensation Insurance. It is your responsibility to immediately notify your immediate supervisor - or in the absence of your supervisor, the next available supervisor - of any injuries you sustain while on the job at XYZ.

This supervisor will notify your personnel representative. We encourage injured employees to seek immediate medical attention. All medical expenses related to the treatment of an injury, sustained on the job, are paid in full direct to the medical providers. After a specified waiting period, you are also eligible for disability payments set forth by state law, where necessary.

The Worker's Compensation plan is administered by a separate insurance company who will be notified by your personnel representative. You will be contacted by a representative of the administering company. Information on the current company administering this plan will be provided to you by your personnel representative and is available on posters displayed in your work area. Additional information on Worker's Compensation Insurance is available through the Personnel office.

Retirement Plans

XYZ employees have the opportunity to participate in a retirement plan which allows employees to save a portion of their compensation for retirement. After one year of service, employees are eligible to participate in the plan. Contributions to this plan are pre-tax dollars, which means the amount specified by the employee is taken from his/her salary before federal income is taken out. The employee is then taxed on the remaining salary, resulting in additional savings. It should be noted that any distribution from the 401(k) plan will be subject to tax, whether that be early or qualified distribution. Early distribution may also carry a monetary penalty. See your personnel representative for more details and a copy of the XYZ Employee Savings Plan.

Contributions by the organization are based on the amount contributed by the employee, with XYZ matching 30% of the employee's contribution. As with employee contributions, taxes on organization contributions and their related earnings, are deferred until distribution from the plan. Organization contributions are not fully vested to the employee until after a five year period; employee contributions are fully vested from the time of contribution.

Employees are urged to seek advice from a financial expert prior to any distribution from the 401(k) plan. XYZ also contributes to the 401(k) for employees participating in this plan.

Tuition Assistance

It is our belief that education leads to self improvement which improves the value of the employee to XYZ. In that vein, we encourage higher education to prepare employees for greater responsibility within The Organization. XYZ will pay for courses which are directly related to your present job or which will help you prepare for more responsibilities or promotions. All courses must be approved by your supervisor and your personnel representative, who can provide more specific information on courses covered by this plan. Only employees working thirty (30) regular hours or more per week are eligible.

The plan reimburses expenses for any approved course started after your full-time employment with XYZ begins, but reimbursement of expenses will not begin until you have completed six (6) months of full-time employment. Courses and seminars, and related fees, books and materials, directly related to the general and customer service industry are reimbursed to eligible employees at 100%. Tuition for courses taken to complete an approved business degree is also reimbursed at 100%, except that related fees, and costs of books and materials are not covered.

To qualify for reimbursement, the employee must successfully complete the course or seminar with a grade of "C" or better; or where applicable, obtain a completion certificate.

The maximum reimbursement amounts are $3,000 per year for courses in a degreed program, and $1,500 per year for all other courses or seminars.

Contact your personnel representative for proper request forms. These forms must be completed and reviewed by your supervisor, and the Personnel Director, at least 10 business days prior to your enrollment in any course or seminar.

Employee Assistance Program

We encourage our employees to seek assistance, as needed, from qualified professionals. When personal problems and difficulties are identified and appropriately treated in their early stages, the likelihood of a successful outcome is improved. Our Employee Assistance Program (EAP) helps employees deal with problems in a confidential and safe environment.

Should you require assistance with any problem which is impacting your personal and/or professional life, we encourage you to call.

The confidential number is 1-800-555-5555.

These calls are not monitored and are manned by a privately owned counseling referral service. We, at XYZ, will never be aware of your contact to this service, nor will any reports on your contact or treatment be forwarded to us.

All contact and sessions are strictly confidential. Should visits exceed four (4) times per month consecutively in a three (3) month period, the counselor may refer you to a private therapist or counselor which would be covered under your group benefits.

We cannot stress enough, that if you feel the need for counseling, we strongly encourage that you seek assistance.

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MATERIALS FOR VOLUNTEERS IN YOUR ORGANIZATION

Example A. Volunteer Protection Act of 1997

Summary: What It Means To You

1. The purpose of the Volunteer Protection Act of 1997 (VPA) is to provide certain protections to volunteers in lawsuits based on the activities of volunteers. No volunteers shall be liable for harm caused by the act or omission of the volunteer if…

A. The volunteer was acting within the scope of their responsibilities;
B. The volunteer was properly licensed, certified, or authorized to undertake the activities in question;
C. The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the right or safety of the individual(s) harmed; and
D. The harm was not caused by a volunteer operating a vehicle that requires an operator's license or insurance.

2. The VPA prohibits the recovery of punitive damages unless the injured person proves by "clear and convincing evidence" that the volunteer caused the harm by an act constituting willful or criminal misconduct or by conscious, flagrant indifference to the person's safety or rights. This "clear and convincing" standard raises the burden of proof, making it more difficult to recover punitive damages from a volunteer.

3. A volunteer's liability for noneconomic damages will be limited to the proportion of harm for which that volunteer is found liable.

4. The VPA limits the liability of volunteers, but not the liability of the organizations that they serve.

5. The limitation on liability for volunteers does not extend to:

A. Crimes of violence or international terrorism for which the volunteer has been convicted by a court;
B. Hate crimes;
C. Sexual offenses;
D. Misconduct that violates State or Federal civil rights laws; or
E. Misconduct while under the influence of alcohol or drugs.

RELEVANT SECTIONS OF ACTUAL LAW

42 USC § 14501. Findings and purpose

(a) Findings. The Congress finds and declares that—

(1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;

(2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;

(5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;

(6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and

(7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because—

(A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;

(B) the citizens of the United States depend on, and the Federal Government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers;

(C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and

(D)(i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected

due process rights; and (ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

(b) Purpose. The purpose of this Act is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.

42 USC § 14502. Preemption and election of State nonapplicability

(a) Preemption. This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.

(b) Election of State regarding nonapplicability. This Act shall not apply to any civil action in a State court against a volunteer in which all parties are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this Act shall not apply, as of a date certain, to such civil action in the State; and

(3) containing no other provisions.

42 USC § 14503. Limitation on liability for volunteers

(a) Liability protection for volunteers. Except as provided in subsections (b) and (d), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—

(1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;

(2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;

(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

(4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to:

(A) possess an operator's license; or
(B) maintain insurance.

(b) Concerning responsibility of volunteers to organizations and entities. Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) No effect on liability of organization or entity. Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.

(d) Exceptions to volunteer liability protection. If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers.

(2) A State law that makes the organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees.

(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

(4) A State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

(e) Limitation on punitive damages based on the actions of volunteers.

(1) General rule. Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

(2) Construction. Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.

(f) Exceptions to limitations on liability.

(1) In general. The limitations on the liability of a volunteer under this Act shall not apply to any misconduct that—

(A) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(B) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act;

(C) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;

(D) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

(E) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

(2) Rule of construction. Nothing in this subsection shall be construed to effect subsection (a)(3) or (e).

42 USC § 14504. Liability for non-economic loss

(a) General rule. In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity, the liability of the volunteer for noneconomic loss shall be determined in accordance with subsection (b).

(b) Amount of liability.

(1) In general. Each defendant who is a volunteer, shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) Percentage of responsibility. For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.

42 USC § 14505. Definitions

For purposes of this Act:
(1) Economic loss. The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) Harm. The term "harm" includes physical, nonphysical, economic, and noneconomic losses.

(3) Noneconomic losses. The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(4) Nonprofit organization. The term "nonprofit organization" means—

> (A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act; or
>
> (B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act.

(5) State. The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) Volunteer. The term "volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive—

> (A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or
>
> (B) any other thing of value in lieu of compensation, in excess of $ 500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

Volunteer Position Description and Sample Worksheet

Consider using or adapting this worksheet to develop position descriptions for the volunteer positions in your nonprofit.

Sections of the Explanation and Example Job Description

Purpose: This section describes the specific purpose of the position in no more than two sentences. If possible, the purpose should be stated in relation to the nonprofit's mission and goals.

Example: The position of Patient Counselor supports XYZ Organization's Patient Advocacy program for cancer patients. The counseling program is designed to help cancer patients by providing support services such as applying for Medicare, Medicaid and Social Security Disability benefits; locating community resources; and managing debt and negotiating with creditors

Job Title: What title has been assigned to the position?

Example: XYZ Volunteer Patient Counselor

Location: Where will the volunteer work?

Example: The Patient Advocacy Program is conducted at the offices of XYZ Organization on Main Street in Roanoke, Virginia.

Key Responsibilities: List the position's major duties.

Example: The XYZ Volunteer Patient Counselor offers advice and assistance to help cancer patients:

- understand the intricacies of health insurance coverage
- apply for public benefits
- appeal denials of insurance and disability benefits
- protect their jobs
- locate community resources
- arrange for the care and custody of children
- forestall debt collection efforts
- plan for the future by drafting wills, powers of attorney and medical directives

Reports to: Indicate the title of the person to whom the volunteer reports.

Example: Executive Director of XYZ Organization

Length of Appointment: Note the time period in which the volunteer will serve, and include restrictions, if applicable.

Example: The XYZ Patient Counselor will serve for Fall 2005 and Spring 2006. The volunteer is eligible to further serve with approval from the Executive Director.

Time Commitment: Indicate the approximate number of days or hours required per week.

Example: The XYZ Volunteer Patient Counselor position requires a minimum commitment of two hours per week. In addition, each volunteer must attend a six-hour orientation during the week before participation begins. The orientation program is held from 3-9 p.m. each Wednesday.

Qualifications: List education, experience, knowledge, and skills required. If a criminal history record check or other background check will be conducted, it should be indicated here.

Example: Eligible candidates for the Patient Counselor position include adults over 21 years of age who have earned a Bachelor's Degree and Juris Doctor Degree, who pass a criminal history record check and other screening procedures, and who are currently members in good standing of the Virginia State Bar.

Support Provided: List resources that will be available to the volunteer.

Example: Training for this position will be provided at the six-hour orientation session. In addition, the Executive Director is available on an ongoing basis to answer questions and provide other assistance as needed.

Other categories that an organization would include, if applicable, in a volunteer job description are:

- *appointed by*
- *development opportunities*
- *relationships*
- *age requirement*
- *benefits provided (e.g., lunch, T-shirt or opportunity to assist a young person achieve academic success).*

BASIC VOLUNTEER APPLICATION

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Application Date _____

Volunteer Position Sought _____

Name _____

Home Address _____

Work Phone _____Home Phone _____

Education
Highest Level of Education _____

Employment
Current Employer, if applicable _____

Position/Title _____

Dates of Employment (starting, ending) _____

Company/Employer _____

Address _____

Would you like us to keep your employer abreast of your volunteer service and achievement?
No__ Yes__

Special training, skills, hobbies _____
_____
_____

Groups, clubs, organizational memberships _____
_____
_____

Please describe your prior volunteer experience (include organization names and dates of service) _____
_____
_____
_____

What experiences have you had that may prepare you to work as a volunteer in the field of cancer patient advocacy, or a related field? _____
_____

_____

_____

Why do you want to volunteer? What do you want to gain from this volunteer experience?

_____

_____

_____

Have you ever been convicted of a crime? If yes, please explain the nature of the crime and the date of the conviction and disposition. Conviction of a crime is not an automatic disqualification for volunteer work.

_____

_____

Do you have: a driver's license? No__ Yes__
Car insurance? No__ Yes__
Car available for transporting others? No__ Yes__
Malpractice insurance, if applicable? No__ Yes__

REFERENCES: Please list three people who know you well and can attest to your character, skills, and dependability. Include your current or last employer.

Name/Organization Relationship to You Phone Length of relationship

1. _____

2. _____

3. _____

Please read the following carefully before signing this application:
I understand that this is an application for and not a commitment or promise of volunteer opportunity.

I certify that I have and will provide information throughout the selection process, including on this application for a volunteer position and in interviews with XYZ Organization that is true, correct and complete to the best of my knowledge. I certify that I have and will answer all questions to the best of my ability and that I have not and will not withhold any information that would unfavorably affect my application for a volunteer position. I understand that information contained on my application will be verified by XYZ Organization. I understand that misrepresentations or omissions may be cause for my immediate rejection as an applicant for a volunteer position with XYZ Organization or my termination as a volunteer.

Signature _____ Date _____

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Disclaimer Language for a Volunteer Application*

**Please note that the disclaimer language featured below is not appropriate for all volunteer assignments. Low-risk volunteer positions should probably not be subject to the rigorous review and scrutiny contemplated in this disclaimer. Before using disclaimer language, give some thought to how it will be perceived by prospective volunteers and modify to meet the specific needs of your nonprofit.*

Read Carefully Before Signing This Application

I hereby consent to permit XYZ Organization to contact anyone it deems appropriate to investigate or verify any information provided by me to discuss my suitability for a volunteer position, including my background, volunteer experience, education or related matters. I expressly give my consent to any discussions regarding the foregoing and I voluntarily and knowingly waive all rights to bring an action for defamation, invasion of privacy, or similar cause of action, against anyone providing such information.

I hereby authorize any organization affiliated with XYZ Organization to investigate my background as necessary for the consideration of my application for the position of _____ _____.

I further authorize all persons, schools, companies, organizations, credit bureaus and law enforcement agencies to supply all information concerning my background and to furnish reports thereon. I hereby release them and any organization affiliated with XYZ Organization from any and all liability and responsibility arising from their doing so.

I certify that the answers given by me to all questions on this application and any attachments are, to the best of my knowledge and belief, true and correct and that I have not knowingly withheld any pertinent facts or circumstances. I understand that any omission or misrepresentation of fact in this application may result in refusal of or separation from volunteer service upon discovery thereof.
I understand that this is an application for and not a commitment or promise of volunteer opportunity.

Applicant's Signature _____ Date _____

QUESTIONS TO ASK A REFERENCE FOR A VOLUNTEER POSITION

General questions

- In what capacity have you known the applicant and for how long?
- Would you rehire the applicant? If no, why not?
- How does the candidate handle frustration and criticism while on the job?
- Was the candidate punctual?

Questions for applicants who will be working with children, the elderly, the disabled or other vulnerable clients

- When and where have you observed the candidate working with young children or the elderly?
- What is the candidate's philosophy about discipline?
- In your opinion, are there any reasons why placing vulnerable clients in the care of the candidate would expose the clients to undue risk or harm?

Question for applicants for mentoring positions

- Would you be comfortable having the applicant assigned to mentor someone in your family?

CHAPTER 5 APPENDIX: OPERATIONS AND GOVERNANCE DOCUMENTS

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Sample Conflict of Interest Statement[40]

For Officers, Directors, Committee Members, Staff Members, Institute Faculty and certain Consultants to the Legal Information Network for Cancer (LINC).

No member of the LINC Board of Directors, or any of its Committees, shall derive any personal profit or gain, directly or indirectly, by reason of his or her participation with LINC. Each individual shall disclose to LINC any personal interest which he or she may have in any matter pending before LINC and shall refrain from participation in any decision on such matter.

Any member of the LINC Board, any Committee or Staff who is an officer, board member, a committee member or staff member of a borrower organization or a loan applicant agency shall identify his or her affiliation with such agency or agencies; further, in connection with any credit policy committee or board action specifically directed to that agency, he/she shall not participate in the decision affecting that agency and the decision must be made and/or ratified by the full board.

Any member of the LINC Board, any Committee, Staff of Institute Faculty shall refrain from obtaining any list of NFC clients for personal or private solicitation purposes at any time during the term of their affiliation.

At this time, I am a Board member, a committee member, or an employee of the following organizations:

NAME	CONTACT INFORMATION
1.	
2.	
3.	
4.	
5.	

Now this is to certify that I, except as described below, am not now nor at any time during the past year have been:

1) A participant, directly or indirectly, in any arrangement, agreement, investment, or other activity with any vendor, supplier, or other party; doing business with LINC which has resulted or could result in person benefit to me.

2) A recipient, directly or indirectly, of any salary payments or loans or gifts of any kind or any free service or discounts or other fees from or on behalf of any person or organization engaged in any transaction with LINC.

[40] Adapted from Internet Nonprofit Center sample policy, available at http://www.nonprofits.org/npofaq/16/59.html, accessed on April 17, 2005.

Any exceptions to 1 or 2 above are stated below with a full description of the transactions and of the interest, whether direct or indirect, which I have (or have had during the past year) in the persons or organizations having transactions with LINC.

TRANSACTION	DESCRIPTION
1.	
2.	
3.	
4.	
5.	

Date: _____

Signature: _____

Printed name: _____

Legal Information Network for Cancer (LINC)
Roanoke Valley Regional Office
Roanoke, Virginia

CHAPTER 5 APPENDIX: AVOIDING CONFLICTS

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Sample Conflict of Interest Policy[41]

A conflict of interest is defined as an actual or perceived interest by a (staff member/board member/network attorney) in an action that results in or has the appearance of resulting in, personal, organizational or professional gain. A conflict of interest occurs when a (staff member/board member/network attorney) has a direct or fiduciary interest which include:

- Ownership with; or
- Employment of or by; or
- Contractual relationship with; or
- Creditor or debtor to; or
- Consultative or consumer relationship to:

a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services. (In other organizations the definition of conflict of interest includes any bias or the appearance of bias in a decision-making process that would reflect a dual role played by a member of the organization or group. An example, for instance, involves a person who is an employee and a Board member, or a person who is an employee and who hires family members as consultants.)

It is in the interest of the organization, individual staff and Board members to strengthen trust and confidence in each other, to expedite resolution of problems, to mitigate the effect and to minimize organizational and individual stress that can be caused by a conflict of interest.

Employees are to avoid any conflict of interest and even the appearance of a conflict of interest. This organization serves the Roanoke community as a whole rather than only serving a special interest group. The appearance of a conflict of interest can cause embarrassment to the organization and jeopardize the credibility of the organization. Any conflict of interest, potential conflict of interest or the appearance of a conflict of interest is to be reported to the Executive Director or your supervisor immediately. Employees are to maintain independence and objectivity with clients, the community and organization. Employees are called to maintain a sense of fairness, civility, ethics and personal integrity even though law, regulation or custom does not require them.

Employees, members of employee's immediate family, and members of the Board are prohibited from accepting gifts, money or gratuities from the following:

- Persons receiving benefits or services from the organization;
- Any person or entity performing or seeking to perform services under contract with the organization; and

[41] Donald A. Griesmann, *What Must We, What Can We Disclose to the Public, Staff, Board and Clients?*, Aug. 10, 2002, updated Jul. 14, 2003), available at http://www.nonprofits.org/npofaq/misc/020120dag.html, accessed on April 17, 2004.

- Persons who are otherwise in a position to benefit from the actions of any employee of the organization.

Employees may, with the prior written approval of the Executive Director, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave or leave without pay. If the employee is acting in any official capacity, honoraria received by an employee in connection with activities relating to employment with the organization are to be paid to the organization.

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Sample Lawyer-Client Conflicts Screening Form

Upon contact from a potential LINC client, please note the following information during the initial telephone screening interview. This information should then be sent via email or interoffice mail to the staff attorneys at LINC for review and consideration. Any potential conflicts of interest should be recorded on this form and filed appropriately with all other initial screening forms. The email can include this form and a simple statement such as:

"Please let me know if there is any reason why we may not undertake the representation of Jane Doe, a cancer patient from Roanoke Valley who has never been previously represented by an attorney. Her relevant information is attached. A conflict exists if:

- Representation will be directly adverse to another client; or
- There is a significant risk that the representation of this client will be materially limited by representation of another client, a former client, or a third person, or the personal interest of the lawyer; and
- You do not reasonably believe that you can provide diligent and competent representation to each conflict without violating the law or other Rules of Professional Responsibility, and you receive written, informed consent from each affected client."[42]

If a network attorney is contacted regarding this client's case, he/she should review this information to ensure that no present conflict exists. In the event that a conflict does exist, that attorney shall be appropriately screened from all information and discussion related to this case.

Name	
Address	
Phone	
Email	
Previous Legal Representations	
Current Legal Issue	
Temporary File No.	
Conflicts	

Recorded By:

_____ _____

Signed Date

_____

Printed Name

[42] ABA Model Rule 1.7.

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SAMPLE FEE AGREEMENT *(ordinary)*

THIS AGREEMENT, made and entered into this ___ day of _____, 20___, by and between _____, hereinafter referred to as Attorney, and _____, hereinafter referred to as Client provides as follows:

1. Attorney shall represent Client on the following matter:_____

2. Client shall pay Attorney a fee of _____ Dollars, which shall be paid as follows: _____

3. Client shall further reimburse to Attorney all costs and expenses as they become due. These may include, but are not limited to, court reporter fees, investigator's fees, expert witness fees, costs of testing, photographic services, travel expenses, exhibit preparations, and copying costs.

4. Legal fees [*shall/shall not*] include representation or services for any appeal or retrial.

5. Client shall fully co-operate with attorney and truthfully disclose all facts about this case.

6. In the event Attorney must withdraw or cannot continue in the representation of Client, Attorney shall refund the unearned portion of any legal fees paid. Attorney shall be entitled to keep fees for services rendered up to the time of termination at a rate of _____ Dollars per hour.

8. Client states that he/she has read this Agreement and has had all his/her questions about it answered and fully understands and agrees to it.
9. Witness the following signatures and seals.

_____ Date: _____
Attorney

_____ Date: _____
Client

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SAMPLE FEE AGREEMENT

(when organization is paying attorney)

THIS AGREEMENT, made and entered into this ___ day of _____, 20___, by and between _____, hereinafter referred to as Attorney, and *Legal Information Network for Cancer (LINC)*, hereinafter referred to as Organization, and _____, hereinafter referred to as Client provides as follows:

1. Attorney shall represent Client on the following matter: *preparing a last will and testament*.

2. Organization shall pay Attorney a fee of _____ Dollars, which shall be paid as follows: *in one payment upon completion of services*.

3. Organization shall further reimburse to Attorney all costs and expenses as they become due. These may include, but are not limited to, court reporter fees, investigator's fees, expert witness fees, costs of testing, photographic services, travel expenses, exhibit preparations, and copying costs.

4. Legal fees [*shall/shall not*] include representation or services for any appeal or retrial.

5. Attorney shall ensure that Organization will not interfere with Attorney's professional independence or seek to compromise Client's confidential information.

6. Client shall fully co-operate with attorney and truthfully disclose all facts about this case.

7. In the event Attorney must withdraw or cannot continue in the representation of Client, Attorney shall refund the unearned portion of any legal fees paid to Organization. Attorney shall be entitled to keep fees for services rendered up to the time of termination at a rate of _____ Dollars per hour.

8. Client states that he/she has read this Agreement and has had all his/her questions about it answered and fully understands and agrees to it.

Witness the following signatures and seals.

_____ Date: _____
Attorney

_____ Date: _____
Client

_____ Date: _____
Organization

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SAMPLE CONSENT TO FUTURE CONFLICTS

I, the undersigned client, do hereby retain and employ the law firm of _____ as my attorneys to represent me in my claim against *ABC Insurance Company*, "Defendant," arising out of *Defendant's denial to cover the medical costs of my breast augmentation that I received on the ___ day of _____, 2005, following a mastectomy, which was needed to remove a cancerous lump.*

I hereby consent to future conflicts *involving the law firm's possible representation of ABC Insurance Company as a defendant in a different matter with a different plaintiff. (Note: The reason must be specific and Client must fully understand the potential conflict. See Comment 22 to ABA Rule 1.7.)*

Following consideration of the aforesaid future conflict, I hereby state that I consent and agree to my representation by the law firm of _____.

Given under my hand and seal this ___ day of _____, 2005.

_____(SEAL)
Client

The above employment is accepted upon the terms stated herein.

Law Firm

By: _____(SEAL)

CONSENT TO DISCLOSURE OF INTAKE INTERVIEW INFORMATION Return to Top

I understand that the following information is protected by the ABA Model Rules and cannot be released without written consent unless otherwise provided for in the rules. I also understand that I may revoke this consent in writing at any time unless action has already been taken upon this consent. I further understand that by consenting to this disclosure the organization collecting this information owes no duty of loyalty to me, so that no future conflict of interest can result so long as the organization does not represent me.

I hereby consent to disclosure of the following information related to my request for legal representation for the purposes of determining whether I qualify for representation by the organization within its set priorities and limitations and for determining whether a conflict of interest exists with an attorney within the organization.

[The organization's questions would follow which would probably include the person's name, income, basic problem, etc.]

_____ Date: _____
Client

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RETAINER AGREEMENT LIMITING REPRESENTATION

THIS AGREEMENT, made and entered into this ___ day of _____, 20___, by and between _____, hereinafter referred to as Attorney, and _____, hereinafter referred to as Client,

WITNESSETH:

THAT FOR AND IN CONSIDERATION of the mutual covenants contained herein, the parties hereby agree as follows:

1. Attorney will represent Client in certain legal matters as counsel, to-wit: *warrant in debt brought by MCV Physicians*. It is understood that this Agreement does not include representation on appeal, retrial or for any other purpose except those expressly stated herein.

2. Client understands that Attorney cannot effectively represent Client without the cooperation and total honesty of Client, and accordingly, Client agrees to be open, cooperative and honest with Attorney in all matters.

4. Client acknowledges being fully advised on the availability of and information about other counsel, including court-appointed counsel where appropriate, and after due consideration, Client desires to have Attorney represent him as his counsel, and therefore enters into this Agreement.
5.

Witness the following signatures and seals:

_____SEAL)
Client

_____SEAL)
Attorney

VIRGINIA CODE OF PROFESSIONAL RESPONSIBILITY
RULES ADDRESSING CONFIDENTIALITY

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In Virginia the issue of confidentiality is addressed in three separate provisions found in the Virginia Code of Professional Responsibility. They read as such :

3-104 (C) Nonlawyer Personnel.
A lawyer or law firm that employs nonlawyer personnel shall exercise a high standard of care to assure compliance by the nonlawyer personnel with the applicable provisions of the Code of Professional Responsibility. The initial and the continuing relationship with the client must be the responsibility of the employing attorney.

4-101 Preservation of Confidences and Secrets of a Client.

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except as provided by DR 4-101(C) and (D), a lawyer shall not knowingly:

(1) Reveal a confidence or secret of his client.

(2) Use a confidence or secret of his client to the disadvantage of the client.

(3) Use a confidence or secret of his client for the advantage of himself or a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:

(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

(2) Confidences or secrets when required by law or court order.

(3) Information which clearly establishes that his client has, in the course of the representation, perpetrated upon a third party a fraud related to the subject matter of the representation.

(4) Confidences or secrets necessary to establish the reasonableness of his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall reveal:

(1) The intention of his client, as stated by the client, to commit a crime and the information necessary to prevent the crime, but before revealing such information, the attorney shall,

where feasible, advise his client of the possible legal consequences of his action, urge the client not to commit the crime, and advise the client that the attorney must reveal the client's criminal intention unless thereupon abandoned, and, if the crime involves perjury by the client, that the attorney shall seek to withdraw as counsel.

(2) Information which clearly establishes that his client has, in the course of the representation, perpetrated a fraud related to the subject matter of the representation upon a tribunal. Before revealing such information, however, the lawyer shall request that his client advise the tribunal of the fraud. Information is clearly established when the client acknowledges to the attorney that he has perpetrated a fraud upon a tribunal.

(E) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.

5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).

(C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) A lawyer who has represented a client in a matter shall not thereafter represent another person in the same or substantially related matter if the interest of that person is adverse in any material respect to the interest of the former client unless the former client consents after disclosure.

(E) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment.

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EXAMPLE OF NPO SPECIFIC CONFIDENTIALITY POLICY

LINC maintains a strict policy on the use of client identification and related information. We value your privacy and know how important it is to you to have complete peace of mind regarding our use of information about you. We have always used personal information ONLY when necessary to fulfill requests made by you. We restrict access to our facilities and records in order to assure the security of client information. We NEVER exchange, sell or otherwise provide other organizations with client information. We will continue to work hard to protect client information so that you can sleep easier knowing we care about you and your privacy.

Confidentiality is the cornerstone of all LINC programs. All client records are clearly marked confidential and are secured at all times. A client must sign a completed disclosure form prior to the release of any information. Client confidentiality will only be breached when a client is in eminent danger of hurting themselves or others.

EXAMPLE OF NPO SPECIFIC CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT FOR BOARD MEMBERS AND EMPLOYEES

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LINC maintains strict confidentiality and security of records in compliance with the Health Insurance Portability and Accountability Act (HIPAA), in addition to other federal and state laws. These laws pertain to the security and privacy of all records that contain information that identifies or could lead to the identification of a client or that could reveal private information concerning an employee or client.

Employees are authorized access to such private information as a condition of employment to the extent necessary to perform their duties. As an employee/volunteer/
board member/third-party administrator of LINC, you are required to protect against unauthorized access to such information, ensure the security and privacy of such information, and disclose any anticipated threats or hazards to such information. You must be very careful not to release this information to the public or to other individuals, including but not limited to employees who have not been authorized or who do not have a **legitimate business need to know**. Any questions regarding release of such information to another person should be directed to your supervisor or their designee.

LINC defines unauthorized access to be:

1. Access to client, employee or organizational information not necessary to carry out your job responsibilities.
2. Non-business access to the records of clients or employees. This includes employee and client children, spouse, parents and other relatives as well as friends and acquaintances.
3. Release of client or employee information to unauthorized internal or external users.
4. Release of additional or excessive client or employee information to an authorized individual/agency than is essential to meeting the stated purpose of an approved request.

Information may not be divulged, copied, released, sold, loaned, reviewed, altered or destroyed except as properly authorized by the appropriate organization official within the scope of applicable federal or state laws, including record retention schedules and corresponding Internal Governing Policies.

As an employee/volunteer/board member/third-party administrator of LINC, you must abide by the rules, regulations, policies and procedures of LINC as well as federal and state laws applicable to your position in this organization. LINC may at any time revoke employee/volunteer/board member/third-party access, other authorization or other access to confidential information. Additionally, failure to comply with any of the acts, rules, regulations, LINC policies and corresponding procedures may result in disciplinary action, including termination of employment. Criminal or civil penalties may also be imposed, depending upon the nature and severity of the breach of confidentiality.

Having read and understood this policy

AGREED AND ACCEPTED BY:

Date: _____

By_____ Witness:_____

Title:_____

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EXAMPLE OF NPO SPECIFIC CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT FOR CLIENT

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

WHEREAS, _____ [YOUR NAME] agrees to furnish certain confidential information relating to [insert what type of information may be collected];

WHEREAS, _____ [NPO NAME] agrees to review, examine, inspect or obtain such confidential information only for the purposes described above, and to otherwise hold such information confidential pursuant to the terms of this Agreement.

BE IT KNOWN, that _____ [YOUR NAME] has or shall furnish to _____ [NPO NAME] certain confidential information and may further allow _____ [NPO NAME] the right to discuss or share this information on the following conditions:

1. _____[NPO NAME] agrees to hold confidential or proprietary information in trust and confidence and agrees that it shall be used only for the contemplated purposes, shall not be used for any other purpose, or disclosed to any third party unless expressly authorized by this agreement or further written authorization by _____ [YOUR NAME].

2. At the conclusion of any discussions, or upon demand by _____ [YOUR NAME], all confidential information shall be returned to_____ [YOUR NAME].

3. Confidential information shall not be disclosed to any employee, consultant or third party unless they agree to execute and be bound by the terms of this Agreement, and have been approved by_____ [YOUR NAME].

4. This Agreement and its validity, construction and effect shall be governed by the laws of [insert jurisdiction].

AGREED AND ACCEPTED BY:

Date: _____

By _____ Witness: _____

Title: _____

By: _____

Title: _____

ABA MODEL RULES OF PROFESSIONAL CONDUCT
RELEVANT CODE SECTIONS

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RULE 1.0 TERMINOLOGY

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment

Confirmed in Writing

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

Firm

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

Fraud

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

Informed Consent

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

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of """"writing" and "confirmed in writing," see paragraphs (n) and (b). Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see paragraph (n).

Screened

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

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

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

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

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

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

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

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the

lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

Comment

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

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

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

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

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 information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has

committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

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

[14] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for

disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

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

Acting Competently to Preserve Confidentiality

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

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

Former Client

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

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

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

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

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

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

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

(2) the representation is not prohibited by law;

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

(4) each affected client gives informed consent, confirmed in writing.

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse

a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [[29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

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 a 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, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[16] 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.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed

consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot

be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] 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 Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a)A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer

any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;
(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
(3) information relating to representation of a client is protected as required by Rule 1.6.

(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.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and
(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Comment

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer 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 Rule 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 Rule 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 the 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 material 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 Rule 1.0(e) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer 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 the requirements of paragraph (a), but also with the requirements of Rule 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, 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 Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the

client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).

Financial Assistance

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule. 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality.

Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements

[13] 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 Rule 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, Rule 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 Rule 1.0(e) (definition of informed consent). 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.

Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition,

the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

RULE 1.13 ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

> (1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a violation of law, and
> (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization,

then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Comment

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As

defined in Rule 1.0(f), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(b)(1) - (6). Under paragraph (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rules 1.6(b)(2) and 1.6(b)(3) may permit the lawyer to disclose confidential information. In such circumstances Rule 1.2(d)

may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

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 such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. 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 under applicable law 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 and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

RULE 1.18 DUTIES TO PROSPECTIVE CLIENT

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

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

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:
(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee there from; and
(ii) written notice is promptly given to the prospective client.

Comment

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

[2] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a ""prospective client" within the meaning of paragraph (a).

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule

1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0(e) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(k) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

RULE 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 disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or 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 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 a 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

[1] The provisions of this Rule express traditional limitations on sharing 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 Rule 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).

RULE 7.2: ADVERTISING

(a) Subject to the requirements of Rules 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. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
(3) pay for a law practice in accordance with Rule 1.17; and
(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and
(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Comment

[1] To assist the public in 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 Rule permits public dissemination of information concerning a lawyer's name or firm name, address 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 advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the

public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

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

Paying Others to Recommend a Lawyer

[5] Lawyers are not permitted to pay others for channeling professional work. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads, 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. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

[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 prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons 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 Rule 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 as affording adequate protections for prospective clients. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of prospective clients; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not refer prospective clients to lawyers who own, operate or are employed by the referral service.)

[7] 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 Rule 5.3. Legal service plans and

lawyer referral services may communicate with prospective clients, but such communication must be in conformity with these Rules. 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 prospective clients 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 Rule 7.3.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.