



24 The Subcommittee members are:

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|    |                            |            |
|----|----------------------------|------------|
| 26 | Brett A. Adams, Esq.       | Columbus   |
| 27 | Richard A. Baker, Esq.     | Cambridge  |
| 28 | Carla J. Cannon, Esq.      | Columbus   |
| 29 | Taylor Jones, Jr., Esq.    | Dayton     |
| 30 | Robert K. Leonard, Esq.    | Lima       |
| 31 | Gary J. Leppla, Esq.       | Dayton     |
| 32 | Colleen R. Militello, Esq. | Dayton     |
| 33 | John J. Mueller, Esq.      | Cincinnati |
| 34 | Frank E. Quirk, Esq.       | Akron      |
| 35 | Prof. Alan M. Ruben        | Cleveland  |
| 36 | Edward M. Smith, Esq.      | Dayton     |
| 37 | Kevin H. Taylor, Esq.      | Van Wert   |

38

39 The Subcommittee recommends that the Ohio State Bar Association support adoption  
40 of the proposed Rules of Professional Conduct with the changes recommended below.

41

42 Respectfully submitted,

43

44 Frank E. Quirk, Chair

45 John J. Mueller, Vice-Chair

46

47

48 The Proposed Model Rules of Professional Conduct include a “Preamble and Scope”, a  
49 section on “Terminology”, and eight Rules dealing with the various ethical  
50 responsibilities of lawyers and/or law firms. This report is limited to discussing those  
51 proposed rules which a majority of the Subcommittee believed required either a change  
52 to a Rule, itself, or to a Comment to a Rule.

53

54 The Subcommittee recommends that the following Rules and Comments be approved  
55 as proposed.

56

| <b><u>Rule</u></b> | <b><u>Description</u></b>   |
|--------------------|---|
| 1.1                | Competence  |
| 1.8                | Conflict of Interest: Current Clients   |
| 1.11               | Special Conflicts of Interest for Former and Current<br>Government Officers and Employees |
| 1.12               | Former Judge, Arbitrator, Mediator or Other Third-Party<br>Neutral                        |
| 1.14               | Client with Diminished Capacity   |

- 1.15 Safekeeping Property
- 1.16 Terminating Representation
- 1.17 Sale of Law Practice
- 2.3 Evaluation for Use by Third Persons
- 2.4 Lawyers Serving as Arbitrator, Mediator, or Third-Party  
Neutral
- 3.3 Candor Toward the Tribunal
- 4.1 Truthfulness in Statements to Others
- 4.2 Communication with Person Represented by Counsel
- 4.3 Dealing with Unrepresented Person
- 5 (*in its entirety*) Law Firms and Associates

6.5 Nonprofit and Court-Annexed Limited Legal Service  
Programs

7.1 Communications Concerning a Lawyer's Services

7.3 Direct Contact with Prospective Clients

8.4 Misconduct

8.5 Disciplinary Authority; Choice of Law

57

58 The Subcommittee recommends adoption of the following Proposed Rules with the  
59 changes noted.

60

61 **Rule 1.2**

62

63 (1) In subsection (c), the Subcommittee recommends deletion of subsection (c)  
64 (lines 17-22) and insertion of the following:

65

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

68

69 (2) In the comments, delete lines 89-115 and insert, “The scope of services to be  
70 provided by a lawyer may be limited by agreement with the client or by the  
71 terms under which the lawyer’s services are made available to the client.  
72 When a lawyer has been retained by an insurer to represent an insured, for  
73 example, the representation may be limited to matters related to the  
74 insurance coverage. A limited representation may be appropriate because  
75 the client has limited objectives for the representation. In addition, the terms  
76 upon which representation is undertaken may exclude specific means that  
77 might otherwise be used to accomplish the client’s objectives. Such  
78 limitations may exclude actions that the client thinks are too costly or that the  
79 lawyer regards as repugnant or imprudent.

80 Although this Rule affords the lawyer and client substantial latitude to limit  
81 the representation, the limitation must be reasonable under the  
82 circumstances. If, for example, a client’s objective is limited to securing  
83 general information about the law the client needs in order to handle a  
84 common and typically uncomplicated legal problem, the lawyer and client may  
85 agree that the lawyer’s services will be limited to a brief telephone  
86 consultation. Such a limitation, however, would not be reasonable if the time  
87 allotted was not sufficient to yield advice upon which the client could rely.

88 Although an agreement for a limited representation does not exempt a lawyer  
89 from the duty to provide competent representation, the limitation is a factor to  
90 be considered when determining the legal knowledge, skill, thoroughness and  
91 preparation reasonably necessary for the representation. See Rule 1.1.

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

95  
96 A majority of the subcommittee recommended changing Rule 1.2 to eliminate the writing  
97 requirement concerning scope of representation and fee-and-expense agreements to  
98 prevent violations of that requirement forming the basis of a disciplinary complaint.

99

100 **Minority Report**

101

102 Rules 1.2 as proposed by the task force mandates that a lawyer confirm, in writing, both  
103 the scope of the representation of the client and the agreement concerning the fees and  
104 expenses the lawyer will charge the client. The rule mandates that the lawyer confirm  
105 these matters, in writing, within a reasonable time after commencing the representation.

106

107 A minority of the subcommittee believed the Supreme Court of Ohio should adopt the  
108 rule as proposed by the task force.

109

110 Still other members of the subcommittee, also in the minority, believed the Supreme  
111 Court of Ohio should increase the amount of fee that triggers the requirement in Rule  
112 1.2 as proposed by the task force to confirm, in writing, the scope of representation and  
113 the agreement concerning the fees and expenses the lawyer will charge the client.

114 Those members believed the Supreme Court of Ohio should change the amount, from  
115 \$500.00 to a substantially higher amount, such as, \$2,500.00.

116

117 **Rule 1.5**

118

119 (1) Delete subsection (b) (lines 18-24) and insert the following: “The scope of the  
120 representation and the basis or rate of the fee and expenses for which the  
121 client will be responsible shall be communicated to the client, preferably in  
122 writing, before or within a reasonable time after commencing the  
123 representation, except when the lawyer will charge a regularly represented  
124 client on the same basis or rate. Any changes in the basis or rate of the fee or  
125 expenses shall also be communicated to the client.”

126

127 (2) In Comment [2], delete line 87, beginning with the word “Unless” through line  
128 88, ending the word “less”. In line 88, capitalize “The”.

129

130 **Minority Report**

131

132 See Minority Report to Rule 1.2, *supra*.

133

134 **Rule 1.6**

135

136 Add comment [7]. “In a matter involving a fee disputed among lawyers arising under  
137 Rule 1.5(e), or otherwise, where the client has no substantial financial interest in the  
138 resolution of the matter, client confidences and secrets may only be disclosed during a  
139 mediation or arbitration provided pursuant to Rule 1.5(f). Concerning fees, client  
140 confidences or secrets may be disclosed if the controversy over the amount or liability  
141 for the fee is between the lawyer and the client.”

142

143 **Rule 1.7**

144

145 Delete lines 10 through 12 and substitute the following therefor:

146

147 “(b) Notwithstanding the existence of a concurrent conflict of interest under division  
148 (a) of this rule, a lawyer may represent a client if all of the following apply:”

149

150 In Comment [18] insert the following at line 195:

151

152 “A lawyer representing a fiduciary does not, solely by that representation, engage in  
153 multiple representation of other parties to whom the fiduciary owes fiduciary duties.”

154

155 **Rule 1.9**

156

157 In lines 4 and 7 “substantially” should not be italicized since it is not a defined term.

158

159 **Rule 1.10**

160

161 Add Comment [9] at line 141:

162

163 “[9] ‘Substantially related’ as used in Rule 1.10(b)(1), and (d) is defined in Comment  
164 [3] of Rule 1.9 (see Rule 1.0, Comment [11]).”

165

166 **Rule 1.13**

167

168 Delete lines 16 through 26 and substitute the following:

169

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

171

172 “(1) despite the lawyer’s efforts in accordance with paragraph (b) the highest  
173 authority that can act on behalf of the organization insists upon or fails to address in  
174 a timely and appropriate manner an action, or a refusal to act, that is clearly a  
175 violation of law, and

176

177 “(2) the lawyer reasonably believes that the violation is reasonably certain to result in  
178 substantial injury to the organization, then the lawyer may reveal information relating  
179 to the representation whether or not Rule 1.6 permits such disclosure, but only if and  
180 to the extent the lawyer reasonably believes necessary to prevent substantial injury  
181 to the organization.

182  
183 “(d) Paragraph (c) shall not apply with respect to information relating to a lawyer’s  
184 representation of an organization to investigate an alleged violation of law, or to  
185 defend the organization or an officer, employee or other constituent associated with  
186 the organization against a claim arising out of an alleged violation of law.

187  
188 (e) A lawyer who reasonably believes that he or she has been discharged because  
189 of the lawyer’s action taken pursuant to paragraphs (b) or (c), or who withdraws  
190 under circumstances that require or permit the lawyer to take action under either of  
191 those paragraphs, shall proceed as the lawyer reasonably believes necessary to  
192 assure that the organization’s highest authority is informed of the lawyer’s discharge  
193 or withdrawal.”

194  
195 **Rule 1.18**

196  
197 Add Comment [10] at line 84:

198

199 “[10] ‘Substantially related’ as used in Rule 1.18(c) is defined in Comment [3] of Rule  
200 1.9. (See Rule 1.0, Comment [11]).”

201

202 **Rule 2.1**

203

204 Delete the second sentence, beginning in line 3 and ending in line 5.

205

206 **Rule 3.7**

207

208 Insert “(b)” in line 5 before “Except”.

209

210 **Rule 4.4**

211

212 In Comment [2], delete lines 20, beginning with the word “Generally”, through 35,  
213 ending with the word “request”.

214

215 **Rule 6.2**

216

217 In line 2, delete the word “tribunal” and insert the word “court”.

218

219 **Rule 7.2**

220

221 At the end of line 5, insert “A lawyer shall not seek employment in connection with  
222 matters in which the lawyer or law firm does not intend to actively participate in the  
223 representation, but that the lawyer or law firm intends to refer to other counsel, except  
224 that this provision shall not apply to organizations listed in Rule 7.2 (b)(2) and (3) or if  
225 the advertisement is in furtherance of the transactions described in Rule 1.17.

226

227 **Rule 7.4**

228

229 After line 12, insert a new Division: “(d) a lawyer engaged in trademark practice before  
230 the United States Patent and Trademark Office may use the designation ‘Trademark’,  
231 ‘Trademark Attorney’ or a substantially similar designation.”

232

233 In line 12, delete “(d)” and insert “(e)”.

234

235 In Comment [2], line 30, insert “and (d)” after “(c)”. In line 31, insert “and Trademark”  
236 after “admiralty”. In line 31, delete “maritime” and in line 32, delete “commerce and”.

237

238 **Rule 7.5**

239

240 In line 4, delete “trade” and insert “firm”.

241

242 In Comment [1], at line 30, after “nonlawyer”, insert, “A lawyer or law firm may also be  
243 designated by a distinctive website address or comparable professional designation.”

244

245 In Comment [4], in line 44, delete “Practitioners” and insert, “lawyers”.

246

247 **Rule 8.1**

248

249 Delete the proposed rule in its entirety and substitute therefor:

250 “An applicant for admission to the bar, or a lawyer in connection with a bar

251 admission application or in connection with a disciplinary matter, shall not:

252 (a) knowingly make a false statement of material fact; or

253 (b) fail to disclose a fact necessary to correct a misapprehension known by the  
254 person to have arisen in the matter, or knowingly fail to respond to a lawful demand  
255 for information from an admissions or disciplinary authority, except that this rule  
256 does not require disclosure of information otherwise protected by Rule 1.6.

257 **Comment**

258 [1] The duty imposed by this Rule extends to persons seeking admission to the bar  
259 as well as to lawyers. Hence, if a person makes a material false statement in  
260 connection with an application for admission, it may be the basis for subsequent  
261 disciplinary action if the person is admitted, and in any event may be relevant in a  
262 subsequent admission application. The duty imposed by this Rule applies to a  
263 lawyer's own admission or discipline as well as that of others. Thus, it is a separate  
264 professional offense for a lawyer to knowingly make a misrepresentation or omission

265 in connection with a disciplinary investigation of the lawyer's own conduct.  
266 Paragraph (b) of this Rule also requires correction of any prior misstatement in the  
267 matter that the applicant or lawyer may have made and affirmative clarification of  
268 any misunderstanding on the part of the admissions or disciplinary authority of which  
269 the person involved becomes aware.

270 [2] This Rule is subject to the provisions of the fifth amendment of the United States  
271 Constitution and corresponding provisions of state constitutions. A person relying on  
272 such a provision in response to a question, however, should do so openly and not  
273 use the right of nondisclosure as a justification for failure to comply with this Rule.

274 [3] A lawyer representing an applicant for admission to the bar, or representing a  
275 lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the  
276 rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some  
277 cases, Rule 3.3.”

278 **Rule 8.2**

279 In line 4, delete “judicial officer” and insert “judge or magistrate”.

280 **Rule 8.3**

281 Delete Divisions (a) and (b), lines 2 through 8, and substitute therefore the following:

282 “(a) A lawyer who knows that another lawyer has committed a violation of the Rules  
283 of Professional Conduct that raises a substantial question as to that lawyer's

284 honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the  
285 appropriate professional authority.

286 (b) A lawyer who knows that a judge or magistrate has committed a violation of  
287 applicable rules of judicial conduct that raises a substantial question as to the  
288 judge's or magistrate's fitness for office shall inform the appropriate authority.

289 **Comment**

290 [1] Self-regulation of the legal profession requires that members of the profession  
291 initiate disciplinary investigation when they know of a violation of the Rules of  
292 Professional Conduct. Lawyers have a similar obligation with respect to judicial  
293 misconduct. An apparently isolated violation may indicate a pattern of misconduct  
294 that only a disciplinary investigation can uncover. Reporting a violation is especially  
295 important where the victim is unlikely to discover the offense.

296 [2] [Reserved]

297 [3] If a lawyer were obliged to report every violation of the Rules, the failure to report  
298 any violation would itself be a professional offense. Such a requirement existed in  
299 many jurisdictions but proved to be unenforceable. This Rule limits the reporting  
300 obligation to those offenses that a self-regulating profession must vigorously  
301 endeavor to prevent. A measure of judgment is, therefore, required in complying with  
302 the provisions of this Rule. The term "substantial" refers to the seriousness of the  
303 possible offense and not the quantum of evidence of which the lawyer is aware. A  
304 report should be made to the bar disciplinary agency unless some other agency,

305 such as a peer review agency, is more appropriate in the circumstances. Similar  
306 considerations apply to the reporting of judicial misconduct.

307 [4] The duty to report professional misconduct does not apply to a lawyer retained to  
308 represent a lawyer whose professional conduct is in question. Such a situation is  
309 governed by the Rules applicable to the client-lawyer relationship.

310 [5] Information about a lawyer's or judge's misconduct or fitness may be received by  
311 a lawyer in the course of that lawyer's participation in an approved lawyers or judges  
312 assistance program. In that circumstance, providing for an exception to the reporting  
313 requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges  
314 to seek treatment through such a program. Conversely, without such an exception,  
315 lawyers and judges may hesitate to seek assistance from these programs, which  
316 may then result in additional harm to their professional careers and additional injury  
317 to the welfare of clients and the public. These Rules do not otherwise address the  
318 confidentiality of information received by a lawyer or judge participating in an  
319 approved lawyers assistance program; such an obligation, however, may be  
320 imposed by the rules of the program or other law.”

321 **Preamble**

322 Insert the following as Comment [7] at line 48

323 “[7] Many of a lawyer's professional responsibilities are prescribed in the Ohio Rules  
324 of Professional Conduct, as well as substantive and procedural law. However, a  
325 lawyer is also guided by personal conscience and the approbation of professional

326 peers. A lawyer should strive to attain the highest level of skill, to improve the law  
327 and the legal profession and to exemplify the legal profession's ideals of public  
328 service.”

329 **Rule 1.0**

330

331 In Comment [6] delete the reference to Rule 1.2(c) at line 114.