

Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Programs

1. Current Kentucky Rule with Official Comments:

The current Kentucky Rules of Professional Conduct do not have a Rule 6.5.

2. Proposed Kentucky Rule with Official Comments:

SCR 3.130(6.5) Nonprofit and court-annexed limited legal services programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule

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

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

3. Discussion and Explanation of Recommendation:

a. Comparison of proposed Kentucky Rule with its counterpart ABA Model Rule.

This is a new MR and has no counterpart Kentucky Rule. The Committee recommends

adoption of MR 6.5. The ABA Reporter's Explanation of Changes expresses the Committee's view. It is adopted by the Committee for purposes of explaining our recommendation and is quoted below.

- ABA Reporter's Explanation of Changes -- Model Rule 6.5

TEXT:

Rule 6.5 is a new Rule in response to the Commission's concern that a strict application of the conflict of interest rules may be deterring lawyers from serving as volunteers in programs in which clients are provided short term limited legal services under the auspices of a nonprofit organization or a court annexed program. The paradigm is the legal advice hotline or pro se clinic, the purpose of which is to provide short term limited legal assistance to persons of limited means who otherwise would go unrepresented.

1. Paragraph (a): Rule only applies to short term legal services provided under auspices of program sponsored by court or nonprofit organization

Paragraph (a) limits Rule 6.5 to situations in which lawyers provide clients short term limited legal services under the auspices of a program sponsored by a nonprofit organization or court. The Commission believes that the proposed relaxation of the conflict Rules does not pose a significant risk to clients when the lawyer is working in a program sponsored by a nonprofit organization or a court and will eliminate an impediment to lawyer participation in such programs. See Comment [1].

2. Paragraph (a)(1): Rules 1.7 and 1.9(a) apply only if participating lawyer "knows" of conflict of interest

Paragraph (a)(1) provides that the lawyer is subject to the requirements of Rules 1.7 and 1.9(a) only if the lawyer knows that the representation involves a conflict of interest. The purpose is to make it unnecessary for the lawyer to do a comprehensive conflicts check in a practice setting in which it normally is not feasible to do so. See Comment [3]. In cases in which the lawyer knows of a conflict of interest, however, compliance with Rules 1.7 and 1.9(a) is required.

3. Paragraph (b): Rule 1.10 only applicable as specified in paragraph (a)(2)

Paragraph (a)(2) provides that a lawyer participating in a short term legal services

program must comply with Rule 1.10 if the lawyer knows that a lawyer with whom the lawyer is associated in a firm would be disqualified from handling the matter by Rules 1.7 or 1.9(a). By otherwise exempting a representation governed by this Rule from Rule 1.10, however, paragraph (b) protects lawyers associated with the participating lawyer from a vicarious disqualification that might otherwise be required. Thus, as explained in Comment [4], a lawyer's participation in a short term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will a personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program. Given the limited nature of the representation provided in nonprofit short term limited legal services programs, the Commission thinks that the protections afforded clients by Rule 1.10 are not necessary except in the circumstances specified in paragraph (a)(2).

COMMENT:

[1] This Comment explains the scope of the Rule.

[2] This Comment explains the relationship to Rule 1.2(c) and adds a reminder that, except for the relaxation of the requirements of Rules 1.7, 1.9 and 1.10, the lawyer must comply with the Rules of Professional Conduct when providing limited legal services.

[3] This Comment provides the reason for limiting disqualification to situations in which the lawyer knows the lawyer's representation involves a conflict of interest for the lawyer or that a lawyer associated with the lawyer in a law firm would be disqualified from handling the matter. A strict duty to identify conflicts does not make sense in the context of the short term limited representation provided through a hotline or pro se clinic.

[4] This Comment explains the effect of and reason for otherwise exempting nonprofit, short term limited legal services programs from Rule 1.10.

[5] This Comment recognizes that in some instances a lawyer who initially intends only to provide a limited short term representation will decide to provide more extensive legal services. In such circumstances, the lawyer must comply with the generally applicable conflict of interest rules.

b. Detailed discussion of reason for variance from ABA Model Rule (if any).

There is no variance in the proposed KRPC 6.5 from MR 6.5.

Committee proposal adopted without change. Order 2009-05, eff 7-15-09.