

DATED this 20th day of July, 2010.

/S/ MIKE MCGRATH
/S/ W. WILLIAM LEAPHART
/S/ PATRICIA O'BRIEN COTTER
/S/ MIKE WHEAT
/S/ JAMES A. RICE
/S/ JAMES C. NELSON

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. AF 09-0688

IN RE: CHANGES TO THE MONTANA RULES OF)
PROFESSIONAL CONDUCT to encourage) ORDER
limited scope representation (LSR) in Montana)

In September of 2010, the Montana Supreme Court Equal Justice Task Force, the Montana Supreme Court Commission on Self-Represented Litigants, and the State Bar Access to Justice Committee petitioned the Court to adopt rule changes in order to encourage limited scope representation (LSR) by Montana attorneys, as one means of addressing the unmet legal needs of low-to moderate-income Montanans. For that purpose, changes were proposed to the Montana Rules of Civil Procedure and the Montana Rules of Professional Conduct.

We invited and received written public comment on the proposed rule changes. At the end of the comment period, we also heard public comment at several public meetings. At our public meeting on March 1, 2011, we voted to adopt most, but not all, of the changes proposed to the Montana Rules of Professional Conduct and the Montana Rules of Civil Procedure.

IT IS NOW ORDERED:

Rules 1.2, 4.2, and 4.3 of the Montana Rules of Professional Conduct are amended by the addition of the language highlighted and underlined below:

Rule 1.2 -- Scope of Representation and Allocation of Authority Between Client and Lawyer [existing subsections (a) and (b)]

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

(1) The client's informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms; or

(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:

(i) the representation is limited to the attorney and the services described in writing; and

(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.

[existing subsection (d)]

Rule 4.2 -- Communication with Person Represented by Counsel

(a) [existing rule]

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Rule 4.3 -- Dealing with Unrepresented Person

(a) [existing rule]

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

The above changes to the Montana Rules of Professional Conduct shall be effective on October 1, 2011.

This Order shall be published on the Montana Supreme Court website. The Clerk is directed to provide copies of this Order to the Montana State Law Library, the State Bar of Montana, Court Services Director Beth McLaughlin, Thomson-Reuters, Chair of the State Bar Ethics Committee Michael Alterowitz, and the Montana Legislative Services Division. The Clerk is further directed to provide copies of this Order to the Chairs of the Montana Supreme Court Equal Justice Task Force, the Montana Supreme Court Commission on Self-Represented Litigants, the State Bar of Montana Access to Justice Committee, and the Advisory Commission on Rules of Civil and Appellate Procedure.

DATED this 15th day of March, 2011.

/S/ MIKE MCGRATH
/S/ BETH BAKER
/S/ MICHAEL E WHEAT
/S/ JAMES C. NELSON
/S/ BRIAN MORRIS
/S/ PATRICIA COTTER
/S/ JIM RICE

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(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.

RULE 5.5 - UNAUTHORIZED PRACTICE OF LAW

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) A lawyer admitted in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this state to the lawyers' employer or its organizational affiliates provided the those legal services are not services for which Montana requires pro hac vice admission and, when provided by a foreign lawyer and requiring advice on the law of this or another jurisdiction of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice. For purposes of this subsection, the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority.

RULE 5.6 - RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

PUBLIC SERVICE

RULE 6.1 - PRO BONO PUBLICO SERVICE

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least fifty (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the fifty (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means; or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

RULE 6.2 - ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

RULE 6.3 - MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

RULE 6.4 - LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

RULE 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.

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 - COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false if it contains a material misrepresentation of fact or law. A misleading communication includes, but is not limited to those that:

(a) omits a fact as a result of which the statement considered as a whole is materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve;

(c) proclaims results obtained on behalf of clients, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts or settlements, without stating that past results afford no guarantee of future results and that every case is different and must be judged on its own merits;

(d) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(e) compares the quality of a lawyer's or a law firm's services with other lawyers' services, unless the comparison can be factually substantiated;

(f) advertises for a specific type of case concerning which the lawyer has neither experience nor competence;

(g) indicates an area of practice in which the lawyer routinely refers matters to other lawyers, without conspicuous identification of such fact;

(h) contains any paid testimonial about, or endorsement of, the lawyer without conspicuous identification of the fact that payments have been made for the testimonial or endorsement;

(i) contains any simulated portrayal of a lawyer, client, victim, scene, or event without conspicuous identification of the fact that it is a simulation;

(j) provides an office address for an office staffed only part time or by appointment only, without conspicuous identification of such fact;

(k) states that legal services are available on a contingent or no-recovery, no-fee basis without stating conspicuously that the client may be responsible for costs or expenses, if that is the case; or

(l) advertises for legal services without identifying the jurisdictions in which the lawyer is licensed to practice.

located in this State pro hac vice, by motion, or before being otherwise admitted to the practice of law in this State, shall, prior to engaging in the practice of law in this State, certify in writing and under oath to this Court that, except as to Rules 6.1 through 6.4, he or she will be bound by these Rules of Professional Conduct in his or her practice of law in this State and will be subject to the disciplinary authority of this State. A copy of said certification shall be mailed, contemporaneously, to the business offices of the State Bar of Montana in Helena, Montana.

A lawyer not admitted to practice in this State is subject to the disciplinary authority of this State for conduct that constitutes a violation of these Rules and that: (1) involves the practice of law in this State by that lawyer; (2) involves that lawyer holding himself or herself out as practicing law in this State; (3) advertises, solicits, or offers legal services in this State; or (4) involves the practice of law in this State by another lawyer over whom that lawyer has the obligation of supervision or control.

A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Effective April 1, 2004

Amended July 5, 2005 (Rule 8.5)

Amended July 20, 2010 (Rules 7.1, 7.2 and 8.5)

Amended March 15, 2011 (Rules 1.2, 4.2 and 4.3)

Amended June 16, 2015 (Rule 5.5)

***Amended September 22, 2016 (Preamble(5), Rule 1.0, Rule 1.6,
Rule 4.4(b))***

Effective January 1, 2017

Amended December 16, 2016 (Rule 1.18(e))