

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on September 12, 2014, the following order was made and entered:

**RE: IMMEDIATE APPROVAL
RULE 6.5, RULES OF PROFESSIONAL CONDUCT**

By order issued April 14, 2014, the Court approved a period of public comment on proposed revisions to the Rules of Professional Conduct. The proposed revisions included a new Rule of Professional Conduct 6.5, titled “Nonprofit and Court Annexed Limited Legal Services Programs,” based upon the American Bar Association Model Rule. The public comment period closed on June 13, 2014. No adverse comments were received regarding proposed Rule 6.5.

Thereafter, on July 30, 2014, officials from Legal Aid of West Virginia and the West Virginia State Bar requested that the Court approve Rule 6.5, effective immediately, in order to foster support for an ongoing effort to encourage attorneys to provide pro bono assistance to persons of limited means. Upon consideration whereof, the Court is of the opinion to and does hereby approve, **effective immediately**, Rule 6.5 of the Rules of Professional Conduct, “Nonprofit and Court-Annexed Limited Legal Services Programs,” to read as follows:

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.

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 systemically 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.

Cross-references to other rules that appear within the body of Rule 6.5, and within the comments, should be read as references to the language of the proposed revisions published for comment on April 14, 2014.

The Clerk is directed to provide a copy of this order to all publishers who normally receive notice of rule changes. The remaining Rules of Professional Conduct will be addressed in due course by separate order.

A True Copy

Attest: /s/ Rory L. Perry II
Clerk of Court

