Rule 2

Canon 1

A Judge Shall Uphold and Promote the Independence, Integrity and Impartiality of the Judiciary, and Shall Avoid Impropriety and the Appearance of Impropriety.

RULE 2-1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

RULE 2-1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Comment

[1] Public confidence in the judiciary is eroded by improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties under this standard include violations of law, court rules or provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and appropriate temperament is impaired.

[6] A judge should initiate and participate in community outreach activities for the

purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this code.

RULE 2-1.3 Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Comment

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] In addition, the need for every recommendation on official stationery to recite that it is the "personal" act of the judge is questionable. Recommendation letters of the type authorized by judicial codes are reviewed by sophisticated individuals with a sufficient knowledge that references are private, not official acts. References sent to educational institutions, governmental agencies, scholarship committees, and businesses are not likely to be misinterpreted as court acts.

[3] Judges may participate in the process of judicial selection by communicating with appointing authorities and screening committees concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule 2-1.3 or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999. Amended July 20, 2011, eff. Jan. 1, 2012.)

CANON 2
A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2-2.1 Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over a judge's personal and extrajudicial activities.

Comment

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent recusal. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2-2.2 Impartiality and Fairness

(A) A judge shall uphold and apply the law, and shall perform all duties of judicial office promptly, efficiently, fairly and impartially.

(B) A judge may make reasonable efforts, consistent with the law and court rules, to facilitate all litigants, including self-represented litigants, being fairly heard.

Comment

[1] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary costs or delay. To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule 2-2.2.

[4] A judge may make reasonable accommodations to afford litigants the opportunity to have their matters fairly heard.

RULE 2-2.3 Bias, Prejudice, and Harassment

(**A**) A judge shall perform the duties of judicial office without bias or prejudice.

(**B**) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(**C**) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status, against parties, witnesses, lawyers, or others.

(**D**) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to personal factors or characteristics, when they are relevant to an issue in a proceeding.

Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

RULE 2-2.4 External Influences on Judicial Conduct

(**A**) A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(**B**) A judge shall not permit family, social, political, religious, or other relationships to influence the judge's judicial conduct or judgment.

(**C**) A judge shall not convey or permit others to convey the impression that any person or organization is in a special position to influence the judge.

Comment

[1] A fair, impartial, and independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

RULE 2-2.5 Competence, Diligence, and Cooperation

(**A**) A judge shall perform judicial and administrative duties competently and diligently.

(**B**) A judge shall cooperate with other judges and court officials in the administration of court business.

Comment

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

RULE 2-2.6 Ensuring the Right to Be Heard

(**A**) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(**B**) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

Comment

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are: (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively

sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether recusal may be appropriate. See Rule 2-2.11(A)(1).

RULE 2-2.7 Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when recusal is appropriate under this code or other law.

Comment

[1] Judges must be available to decide the matters that come before the court. There are times when recusal is appropriate to avoid the appearance of impropriety, to protect the rights of litigants, and to preserve public confidence in the fairness, independence, integrity, and impartiality of the judiciary. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use recusal to avoid cases that present difficult, controversial, or unpopular issues.

RULE 2-2.8 Decorum, Demeanor, and Communication with Jurors

(**A**) A judge shall require order and decorum in proceedings before the court.

(**B**) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(**C**) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding but may express appreciation to jurors for their service to the judicial system and the community.

Comment

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with

the duty imposed in Rule 2-2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

RULE 2-2.9 Ex Parte Communications

(**A**) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(**B**) If a judge inadvertently receives an unauthorized ex parte communication that the judge considers bears upon the substance of a matter, the judge shall take appropriate action.

(**C**) A judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that properly may be judicially noticed.

(**D**) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule 2-2.9 is not violated by court staff, court officials, and others subject to the judge's direction and control.

Comment

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule 2-2.9, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule 2-2.9.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously recused from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2-2.10 Judicial Statements on Pending and Impending Cases

(**A**) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(**B**) A judge shall not, in connection with cases, controversies, or issues that are likely to

come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office, unless the judge recuses under Rule 2-2.11(A)(4).

(**C**) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(**D**) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(**E**) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Comment

[1] The restrictions on judicial speech by this Rule 2-2.10 are essential to the maintenance of the independence, fairness, integrity, and impartiality of the judiciary.

[2] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

RULE 2-2.11 Recusal

(**A**) A judge shall recuse himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer or knowledge of facts that are in dispute in the proceeding that would preclude the judge from being fair and impartial.

(2) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent, or child wherever residing, or any other member of the judge's family residing in the judge's household is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
(b) acting as a lawyer in the proceeding;
(c) a person who has more than a de minimis interest that

could be substantially affected by the proceeding; or
(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;
(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;
(c) was a material witness concerning the matter.

(**B**) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or family members residing in the judge's household.

(**C**) A judge subject to recusal under this Rule 2-2.11, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive recusal. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge need not recuse, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Comment

[1] Under this Rule 2-2.11, a judge should recuse whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) to (5) apply.

[2] The rule of necessity may override the rule of recusal. For example, a judge might be

required to participate in judicial review of matters pertaining to the judiciary, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible recusal and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[3] The fact that a lawyer in a proceeding is affiliated with a law firm with which a member of the judge's family is affiliated does not itself require the judge's recusal. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's recusal is required.

[4] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

> (1) an interest in the individual holdings within a mutual or common investment fund;
> (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, or member of the judge's family living in the same household serves as a director, officer, advisor, or other participant;
> (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests;
> (4) an interest in the issuer of government securities held by the judge; or
> (5) ownership or other financial interest in small publicly traded corporations unless a proceeding pending or impending before a judge could substantially affect the value of the shares.

RULE 2-2.12 Supervisory Duties

(**A**) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code.

(**B**) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Comment

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

RULE 2-2.13 Administrative Appointments

(**A**) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(**B**) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Comment

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligations prescribed by paragraphs (A) and (B).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the fourth degree of relationship by consanguinity or affinity. See Mo. Const. article VII, section 6.

RULE 2-2.14 Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule 2-2.14. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate disciplinary authority, agency, or body. See Rule 2-2.15.

RULE 2-2.15 Responding to Judicial and Lawyer Misconduct

(**A**) A judge having knowledge that another judge has committed a violation of this code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate disciplinary authority.

(**B**) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate disciplinary authority.

(**C**) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this code shall take appropriate action.
(**D**) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

Comment

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule 2-2.15 limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this code, communicating with a supervising judge, or reporting the suspected violation to the appropriate disciplinary authority. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate disciplinary authority.

RULE 2-2.16 Cooperation with Disciplinary Authorities

(**A**) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(**B**) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

Comment

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999. Amended July 20, 2011, eff. Jan. 1, 2012; Oct. 30, 2012, eff. July 1, 2013.)

CANON 3
A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

Rule 2-3.1 Extrajudicial Activities in General

RULE 2-3.1 Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this code. However, when engaging in extrajudicial activities, a judge shall not:

(A) Participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) Participate in activities that will lead to frequent recusal of the judge;

(C) Participate in activities that would demean the judicial office or cast reasonable doubt on the judge's capacity to act impartially as a judge;

(D) Engage in conduct that would appear to a reasonable person to be coercive.

Comment

[1] Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary, and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities. A judge may speak, write, lecture, teach, and participate in other extrajudicial activities concerning the law, the legal system, the administration of justice and nonlegal subjects, subject to the requirements of this Rule 2-3.1.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999. Amended Nov. 25, 2003, eff. Jan. 1, 2004; Dec. 16, 2011, eff. Jan. 1, 2012.)

Rule 4

RULE 4-3.3: CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in Rule 4-3.3(a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 4-1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

COMMENT

[1] Rule 4-3.3 governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 4-1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. For example, Rule 4-3.3(a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] Rule 4-3.3 sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 4-3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 4-1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 4-1.2(d), see the Comment to Rule 4-1.2(d). See also the Comment to Rule 4-8.4(b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in Rule 4-3.3(a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Rule 4-3.3(a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate Rule 4-3.3(a)(3) if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness' testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in Rule 4-3.3(a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 4-1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although Rule 4-3.3(a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and, thus, impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided

criminal defendants, however, Rule 4-3.3(a)(3) does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client or another witness called by the lawyer offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal, and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 4-1.6. It is for the tribunal then to determine what should be done — making a statement about the matter to the trier of fact, ordering a mistrial, or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperates in deceiving the court, thereby subverting the truth-finding process that the adversary system is designed to implement. See Rule 4-1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. The client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating, or otherwise unlawfully communicating with a witness, juror, court official, or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence, or failing to disclose information to the tribunal when required by law to do so. Thus, Rule 4-3.3(b) requires a lawyer to take reasonable remedial measures, including disclosure, if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule 4-3.3 when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding, nevertheless, is to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule 4-3.3 does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 4-1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with Rule 4-3.3's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 4-1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with Rule 4-3.3 or as otherwise permitted by Rule 4-1.6.

(Adopted September 28, 1993, eff. July 1, 1995, Rev. July 1, 2007)

RULE 4-3.5: IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:
(a) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;
(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress, or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

COMMENT

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 4-1.0(m).

(Adopted September 28, 1993, eff. July 1, 1995, July 1, 2007)

RULE 4-3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the

prosecutor that tends to negate the guilt of the accused or mitigates the offense and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;
(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused, and exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 4-3.6 or this Rule 4-3.8.

COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 4-8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Rule 4-3.8(c) does not apply, however, to an accused appearing *pro se* with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and

silence.

[3] The exception in Rule 4-3.8(d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Rule 4-3.8(e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Rule 4-3.8(f) supplements Rule 4-3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments that have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements that a prosecutor may make which comply with Rule 4-3.6(b) or (c).

[6] Like other lawyers, prosecutors are subject to Rules 4-5.1 and 4-5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Rule 4-3.8(f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, Rule 4-3.8(f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

(Adopted September 28, 1993, eff. July 1, 1995, Rev. July 1, 2007)

RULE 4-1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in Rule 4-1.7(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 Rule 4-1.7(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.

(Adopted Aug. 7, 1985, eff. Jan. 1, 1986. Amended March 1, 2007, eff. July 1, 2007)

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 4-1.8. For former client conflicts of interest, see Rule 4-1.9. For conflicts of interest involving prospective clients, see Rule 4-1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 4-1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule 4-1.7 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 Rule 4-1.7(a) and obtain their informed consent, confirmed in writing. The clients affected under Rule 4-1.7(a) include both of the clients referred to in Rule 4-1.7(a)(1) and the one or more clients whose representation might be materially limited under Rule 4-1.7(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 Rule 4-1.7(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 4-5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule 4-1.7. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 4-1.3 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 Rule 4-1.7(b). See Rule 4-1.16. 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 4-1.9. 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 4-1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 4-1.9(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 also can 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 4-1.9 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 4-1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 4-1.10 (personal interest conflicts under Rule 4-1.7 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 4-1.10.

[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 4-1.8(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 4-1.8(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 Rule 4-1.7(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 Rule 4-1.7(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 Rule 4-1.7(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 4-1.1 (competence) and Rule 4-1.3 (diligence).

[16] Rule 4-1.7(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] Rule 4-1.7(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 Rule 4-1.7(b)(3) requires examination of the context of the proceeding. Although Rule 4-1.7(b)(3) 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 4-1.0(m)), such representation may be precluded by Rule 4-1.7(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 4-1.0(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] Rule 4-1.7(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 4-1.0(b). See also Rule 4-1.0(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 4-1.0(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 Rule 4-1.7(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 Rule 4-1.7(b).

Conflicts in Litigation

[23] Rule 4-1.7(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 Rule 4-1.7(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 Rule 4-1.7(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 Rule 4-1.7(a)(1). 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 Rule 4-1.7(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 4-1.4. 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 4-1.2(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 4-1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 4-1.16.

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 4-1.13(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 4-1.8: CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS

(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, including medical evaluation of a client, 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 4-1.6.

(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 Rule 4-1.8(a) to (i) that applies to any one of them shall apply to all of them.

(Adopted Aug. 7, 1985, eff. Jan. 1, 1986. Amended March 1, 2007, eff. July 1, 2007.)

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 Rule 4-1.8(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. Rule 4-1.8(a) 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 4-5.7. 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 4-1.5, 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, Rule 4-1.8(a) 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 Rule 4-1.8(a) are unnecessary and impracticable.

[2] Rule 4-1.8(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. Rule 4-1.8(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. Rule 4-1.8(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 4-1.0(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 Rule 4-1.8(a), but also with the requirements of Rule 4-1.7. 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 4-1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, Rule 4-1.8(a)(2) is inapplicable, and Rule 4-1.8(a)(1)'s 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 Rule 4-1.8(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. Rule 4-1.8(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. Rule 4-1.8(b) 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. Rule 4-1.8(b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules.

See Rules 4-1.2(d), 4-1.6, 4-1.9(c), 4-3.3, 4-4.1(b), 4-8.1, and 4-8.3.

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, Rule 4-1.8(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 Rule 4-1.8(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] Rule 4-1.8(c) 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 4-1.7 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. Rule 4-1.8(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 4-1.5 and Rule 4-1.8(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 4-5.4(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 4-1.7. The lawyer must also conform to the requirements of Rule 4-1.6 concerning confidentiality. Under Rule 4-1.7(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 4-1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that Rule. Under Rule 4-1.7(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 4-1.7, 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 4-1.2(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. Rule 4-1.8(g) 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 4-1.0(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. Rule 4-1.8(h) 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 Rule

4-1.8(h) 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 4-1.2 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 4-1.8(h). 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] Rule 4-1.8(i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like Rule 4-1.8(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. Rule 4-1.8(i) 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 Rule 4-1.8(e). In addition, Rule 4-1.8(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 Rule 4-1.8(a). Contracts for contingent fees in civil cases are governed by Rule 4-1.5.

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 4-1.8(j) 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 4-1.7(a)(2).

[19] When the client is an organization, Rule 4-1.8(j) 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 Rule 4-1.8(k), a prohibition on conduct by an individual lawyer in Rule 4-1.8(a) to (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 Rule 4-1.8(a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in Rule 4-1.8(j) is personal and is not applied to

associated lawyers.

RULE 4-1.9: DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 4-1.6 and 4-1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

(Adopted Aug. 7, 1985, eff. Jan. 1, 1986. Amended March 1, 2007, eff. July 1, 2007.)

Comment

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and, thus, may not represent another client except in conformity with this Rule 4-1.9. Under this Rule 4-1.9, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract

drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government lawyers must comply with this Rule 4-1.9 to the extent required by Rule 4-1.11.

[2] The scope of a "matter" for purposes of this Rule 4-1.9 depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule 4-1.9 if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a dissolution of marriage or divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific

facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Rule 4-1.9(b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 4-1.6 and 4-1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 4-1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of Rule 4-1.9(b) depends on a situation's particular facts, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients.

In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 4-1.6 and 4-1.9(c).

[8] Rule 4-1.9(c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] The provisions of this Rule 4-1.9 are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under Rule 4-1.9(a) and (b). See Rule 4-1.0(e). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 4-1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 4-1.10.

RULE 4-1.10: IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 4-1.7 or 4-1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
(2) any lawyer remaining in the firm has information protected by Rules

4-1.6 and 4-1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule 4-1.10 may be waived by the affected client under the conditions stated in Rule 4-1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 4-1.11.

(Adopted Aug. 7, 1985, eff. Jan. 1, 1986. Amended March 1, 2007, eff. July 1, 2007)

Comment

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes 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. See Rule 4-1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 4-1.0, Comments [2] to [4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in Rule 4-1.10(a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Rule 4-1.10(a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 4-1.9(b) and 4-1.10(b).

[3] Rule 4-1.10(a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a

lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] Rule 4-1.10(a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does Rule 4-1.10(a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 4-1.0(k) and 4-5.3.

[5] Rule 4-1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. Rule 4-1.10(b) applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 4-1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 4-1.6 and 4-1.9(c).

[6] Rule 4-1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 4-1.7. The conditions stated in Rule 4-1.7 require the lawyer to determine that the representation is not prohibited by Rule 4-1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 4-1.7, Comment [22]. For a definition of "informed consent," see Rule 4-1.0(e).

[7] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 4-1.11(b) and (c), not this Rule 4-1.10. Under Rule 4-1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment, or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually

disqualified lawyer.

[8] Where a lawyer is prohibited from engaging in certain transactions under Rule 4-1.8, Rule 4-1.8(k), and not this Rule 4-1.10, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

RULE 4-1.11: SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 4-1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under Rule 4-1.11(a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule 4-1.11.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule 4-1.11, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule 4-1.11 is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is

associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 4-1.7 and 4-1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for private employment as permitted by, and subject to the conditions stated in, Rule 4-1.12(b).

(e) A lawyer who also holds public office, whether full or part-time, shall not engage in activities in which his or her personal or professional interests are or foreseeably could be in conflict with his or her official duties or responsibilities.

(1) A lawyer holding public office shall not attempt to influence any agency of any political subdivision of which such lawyer is a public officer, other than as a part of his or her official duties or except as authorized in sections 105.450 to 105.496, RSMo.

(2) No lawyer in a firm in which a lawyer holding a public office is associated may undertake or continue representation in a matter in which the lawyer who holds public office would be disqualified, unless the lawyer holding public office is screened in the manner set forth in Rule 4-1.11(b).

(f) As used in this Rule 4-1.11, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(Adopted Aug. 7, 1985, eff. Jan. 1, 1986. Amended eff. Oct. 19, 2001; amended March 1, 2007, eff. July 1, 2007; May 30, 2012, eff. Jan. 1, 2013.)

COMMENT

[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 4-1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule 4-1.11. See Rule 4-1.0(e) for the definition of "informed consent."

[2] Rule 4-1.11(a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 4-1.10 is not applicable to the conflicts of interest addressed by this Rule 4-1.11. Rather, Rule 4-1.11(b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, Rule 4-1.11(d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Rule 4-1.11(a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under Rule 4-1.11(a).

Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by Rule 4-1.11(d). As with Rule 4-1.11(a)(1) and (d)(1), Rule 4-1.10 is not applicable to the conflicts of interest addressed by Rule 4-1.11(a)(2) and (d)(2).

[4] This Rule 4-1.11 represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in Rule 4-1.11(b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in Rule 4-1.11(a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule 4-1.11, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by Rule 4-1.11(d), the latter agency is not required to screen the lawyer as Rule 4-1.11(b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 4-1.13, Comment [6].

[6] Rule 4-1.11(b) and (c) contemplate a screening arrangement. See Rule 4-1.0(k) (requirements for screening procedures). Rule 4-1.11(b) and (c) does not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's

compensation to the fee in the matter in which the lawyer is disqualified.

[7] 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.

[8] Rule 4-1.11(c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Rule 4-1.11(a) and (d) does not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 4-1.7 and is not otherwise prohibited by law.

[10] For purposes of Rule 4-1.11(e), a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

[11] Lawyers often serve as legislators or hold other public offices. This is highly desirable as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. However, the public officer lawyer's position on matters of public policy can be inconsistent with the interests of a client. The lawyer should advise the client in all situations and at all times be mindful of the disclosure and consent requirements of Rule 4-1.7.

RULE 4-1.12: FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in Rule 4-1.12(d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a

party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by Rule 4-1.12(a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule 4-1.12.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

(Adopted Aug 7, 1985, eff. Jan. 1, 1986. Amended March 1, 2007, eff. July 1, 2007.)

Rule 18

18.01. Definitions

As used in this Rule 18, the following terms mean:

(a) "**Accredited program or activity**," a program or activity sponsored by the committee, the Missouri Municipal and Associate Circuit Judges Association, the National Judicial College, the National Judges Association, or a program or activity sponsored by The Missouri Bar or other organization that is devoted exclusively to judicial education or directly contributes to the professional competency of judges;
(b) "**Certification**," the course of instruction and examination prescribed by the committee that nonlawyer judges shall complete in order to continue to serve beyond their initial six months in office;
(c) "**Committee**," the Municipal Judge Education Committee;
(d) "**Credit hour**," at least fifty minutes of instruction or the equivalent;
(e) "**Lawyer**," a member of The Missouri Bar except lawyers paying an

annual enrollment fee pursuant to Rule 6.01(j)(3);
(f) "**Municipal judge,**" a judge of the municipal division of a circuit court, including any provisional or substitute judge, who is not also an associate circuit judge;
(g) "**Nonlawyer judge,**" a municipal judge not licensed to practice law in this state;
(h) "**Reporting year,**" the twelve months between July first of one year and June 30th of the following year;
(i) "**State courts administrator,**" the office of state courts administrator.

(Adopted Oct. 27, 1992, eff. July 1, 1993. Amended Feb. 3, 1995, eff. Jan. 1, 1996; July 12, 2001, eff. Sept. 1, 2001.)

Regulations For Continuing Legal Education

The Missouri Supreme Court, approved the following Regulation for Municipal Judge Continuing Education Requirements and Nonlawyer Certification:

Regulation 18.01. Definitions

As used in Regulations 18.01 to 18.06:

(a) Accredited programs or activities include:

(1) Programs or activities offered by a sponsor already accredited or identified by The Missouri Bar pursuant to Rule 15 that also conform with the requirements of Rule 18.01(a);
(2) Programs or activities approved by the committee pursuant to Regulation 18.05(c); or
(3) Speaker credit pursuant to Regulation 18.06.1.

(b) Minutes of instruction or the equivalent do not include introductory remarks, coffee or meal breaks or business meetings.

(c) The number of credit hours of continuing legal education completed in any approved program or activity by a municipal judge shall be computed by:

(1) Determining the total minutes of instruction or the equivalent;
(2) Dividing the total by 50; and
(3) Rounding the quotient up or down to the nearest one-tenth of an hour.

(d) An accredited sponsor is a sponsor all of whose programs or activities are accredited.

(e) An identified sponsor is a sponsor approved to offer a single accredited

program or activity.
(f) Judicial ethics or professionalism programs, seminars, or activities include but are not limited to programs, seminars, or activities, or designated portions thereof, as follows:

(1) Professionalism - instruction concerning judicial ethics; the duties of judges to the judicial system, courts, and the public; the history of the judiciary; rules of judicial conduct; and jurisprudence and philosophy of law;
(2) Judicial ethics - instruction concerning Rule 2.

(Approved eff. Aug. 30, 1993. Amended Feb. 3, 1995, eff. Jan. 1, 1996; July 12, 2001, eff. Sept. 1, 2001.)

Rule 37

37.01. Rules - When Applicable

Rule 37 governs the procedure in all courts of this state having original jurisdiction of ordinance violations and the disposition of any such violation in a violation bureau.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

37.02. Rules - Authority for - Statutes and Ordinances Superseded

Rule 37 is promulgated pursuant to authority granted this Court by Section 5 of Article V of the Constitution of Missouri and supersedes all statutes, ordinances and court rules inconsistent therewith.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2004, eff. July 1, 2004.)

37.03. Rules - Construction

Rule 37 shall be construed to secure the just, speedy and inexpensive determination of ordinance violations.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

37.04. Supervision of Courts Hearing Ordinance Violations

The presiding judge of the circuit shall have general administrative authority over the judges and court personnel of all divisions of the circuit court hearing and determining ordinance violations within the circuit. The judges of all such divisions shall be subject to the rules of the circuit court that are not inconsistent with this Rule 37.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.05. Local Circuit Court Rules - Publication and Distribution

The circuit courts may make rules governing the disposition of ordinance violations if the rules are not inconsistent with the rules of this Court or the Constitution. Upon promulgation, copies of such rules shall be filed with the clerk of this Court. The clerk of each court shall from time to time compile all of the current rules and maintain copies.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

37.06. Definitions

Whenever in this Rule 37 the following terms are used, they mean the following:

(a) "**Animal control violation**," any violation of an ordinance relating to the care or control of any animal;

(b) "**Clerk**," any duly appointed court clerk or court administrator or any deputy or division court clerk serving courts to which this Rule 37 applies;

(c) "**Corrections official**," a person in control of a detention facility;

(d) "**County**," includes the City of St. Louis;

(e) "**Court**," a division of the circuit court having jurisdiction to hear ordinance violations;

(f) "**Detention facility**," any jail, workhouse, lockup or other facility normally operated to hold sentenced offenders or that is used to confine adults awaiting trial;

(g) "**Housing violation**," any violation of an ordinance relating to the condition or maintenance of residential buildings and residential real property;

(h) "**Law**," includes constitutions, statutes, ordinances, judicial decisions and this Rule 37;

(i) "**Municipal division**," any division of the circuit court presided over by a judge having original jurisdiction to hear and determine municipal ordinance violations;

(j) "**Municipality**," includes all charter, first, second, third and fourth class cities, towns and villages;

(k) "**Ordinance**," a law enacted by a municipality or county;

(l) "**Peace Officer**," includes police officers, members of the state highway patrol,

sheriffs, marshals, constables, and their deputies;

(**m**) "**Person,**" includes corporations;

(**n**) "**Prosecutor,**" any attorney or counselor who represents any county, city, town, or village in the prosecution of a person for a violation of an ordinance;

(**o**) "**Traffic violation,**" any violation of an ordinance relating to the control of traffic;

(**p**) "**Violation,**" any ordinance violation within the jurisdiction of any court to which this Rule 37 applies.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

37.07. Pleadings and Papers - Size

All pleadings and other papers, except exhibits, offered for filing in any court and all forms used in any court, including opinions, shall be on paper of a size not larger that 8 1/2 x 11 inches. An exhibit may be on paper larger than size 8 1/2 x 11 inches. The use of recycled paper is acceptable and encouraged.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.08. Rules - When not Applicable - Procedure

If no procedure is specially provided by this Rule 37, the court shall be governed by Rules 19 to 36, inclusive, to the extent not inconsistent with this Rule 37.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000.

Amended December 23, 2003, eff. July 1, 2004.)

37.09. Time - Computation of - Enlargement

(a) Computation. In computing any period of time prescribed or allowed by this Rule 37, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(b) Enlargement. When by this Rule 37 or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

(1) With or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or

(2) Upon notice and motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect;

but the court may not enlarge the period for filing an application for trial de novo.

(c) Additional Time After Service by Mail. When a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by mail, three days shall be added to the prescribed period.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.10. Courts Always Open - Motions, Applications Grantable by Clerk

(a) Court Always Open for Certain Purposes. The court shall be deemed always open for the purpose of filing proper papers, the issuance and return of process, and for the making of motions, applications and orders.

(b) Motions and Proceedings Grantable by Clerk. All motions and applications filed in the clerk's office for issuing process, for issuing final process to enforce judgments and for other proceedings that do not require an order of the court are grantable by the clerk; but such action by the clerk may be suspended, altered or rescinded by the judge upon cause shown.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.11. Writs - Process - Return

Every officer to whom any writ of process or order shall be directed and delivered for service under this Rule 37 shall make return thereof in writing, showing the time, place, and manner of service thereof, and shall sign such return and file the same with the clerk.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.12. [RESERVED]

(Adopted May 14, 1985, effective Jan. 1, 1986. Repealed Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

37.13. Counsel - Right to Consult

Every person arrested and held in custody by any peace officer in any detention facility, police station, or any other place, upon or without a warrant or other process for the alleged commission of an ordinance violation, or upon suspicion thereof, shall promptly, upon request, be permitted to consult with counsel or other persons and, for such purpose, to use a telephone.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.14. Rules of Evidence Inapplicable

Proceedings under Rules 37.14 to 37.32 shall be informal, and technical rules of evidence need not apply.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.15. Right to Release – Conditions

(**a**) Any person arrested for an ordinance violation shall be entitled to be released from custody pending trial. The person is also entitled to be released pending trial de novo, review and appeal. As each court enters a judgment, it shall review the conditions of release and may modify them as provided in Rule 37.19.

(**b**) If an arresting officer has not released a person, the court shall order the person released upon the person's written promise to appear unless the court finds:

(1) The promise alone is not sufficient reasonably to assure the appearance of the person; or

(2) The person poses a danger to a crime victim, the community or any other person.

(**c**) If the court determines that the imposition of conditions will assure that the defendant is reasonably likely to appear and will not pose a danger to a crime victim, the community or any other person, the court shall impose conditions for the release of the person. The appropriate conditions shall include one or more of the following:

(1) Place the person in the custody of a designated person or organization agreeing to supervise the person;

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) Require the execution of a bond in a stated amount with sufficient solvent sureties, or the deposit in the registry of the court of the sum in cash or negotiable bonds of the United States or the State of Missouri or any political subdivision thereof;

(4) Require the person to report regularly to some officer of the court or peace officer in such manner as the court directs;

(5) Require the execution of a bond in a stated amount and the deposit in the registry of the court of ten percent, or such lesser sum as the court directs, of such sum in cash or negotiable bonds of the United States or the State of Missouri or any political subdivision thereof;

(6) Impose any other conditions deemed reasonably necessary, including a condition requiring that the person return to custody after specified hours.

(**d**) In determining which conditions of release will reasonably assure appearance, the court shall, on the basis of available information, take into account the nature and circumstances of the violation, the weight of the evidence against the person, the person's family ties, employment, financial resources, character, mental condition, the length of the person's residence in the community, the person's record of convictions, and record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings.

(**e**) A court releasing a person under Rule 37.15 shall enter an order stating the conditions imposed. The court shall inform such person of the conditions imposed and of the penalties applicable to violations of the conditions of release and shall advise that a warrant for arrest will be issued immediately upon any such violation.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

37.16. Officials Authorized to Set Conditions of Release - Conditions to be Stated on Warrant

(**a**) The court issuing a warrant for the arrest of any accused shall set the conditions for release of the accused. The conditions of release shall be stated on the warrant of arrest. The court shall impose one of the following conditions:

(1) The written promise of the accused to appear; or
(2) The execution of a bond in a stated amount pursuant to Rule 37.15(c)(3); or
(3) The execution of a bond in a stated amount pursuant to Rule 37.15(c)(5).

The court may impose additional conditions for release as provided in Rule 37.15(c).

(**b**) If the arrest of the accused upon warrant occurs in a county other than that in which the ordinance violation occurred, the peace officer making the arrest shall promptly release the accused in accordance with the release conditions or bail prescribed on the warrant; but if none, the peace officer shall take the accused before the court in such county having jurisdiction of ordinance violations, to admit the accused to bail in such sum as the court may determine will likely ensure appearance of the accused. Bail, if taken by the peace officer making the arrest or if taken by a

judge in such county, shall be promptly forwarded to the court from which the warrant was issued.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

37.17. Arrest Without Warrant

When an arrest is made without a warrant, the peace officer may accept bond in accordance with a bail schedule furnished by the court having jurisdiction.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

{Formerly titled "Arrest Without Warrant - Peace Officer May Set Conditions of Release. "}

37.18. Officer Authorized to Accept Conditions of Release

The court that sets the conditions for release, or clerk or peace officer when authorized, may accept the conditions for release and release the accused.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.19. Modification of Conditions of Release

(a) Upon motion by the prosecutor or by the accused, or upon the court's own motion, the court in which the proceeding is pending may modify the requirements for release after notice to the parties and hearing when the court finds that:

(1) New, different, or additional requirements for release are necessary;

(2) The conditions for release that have been set are excessive;

(3) The accused has failed to comply with or has violated the conditions for the accused's release; or

(4) The accused has been convicted of the ordinance violation charged.

(**b**) When the court increases the requirements for release or new requirements are set, the accused shall be remanded to the custody of the corrections official until compliance with the modified conditions. If the accused is not in custody, the court may order that a warrant for the arrest of the accused be issued.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

{Formerly titled "Right to Review of Conditions."}

37.20. Right to Review of Conditions

An accused for whom conditions for release are imposed and who after 24 hours from the time of the release hearing continues to be detained on charges as a result of the accused's inability to meet the conditions for release shall, upon application, be entitled to have the conditions reviewed by the court that imposed them. The application shall be determined promptly.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

{Formerly titled "Modification of Conditions of Release."}

37.21. Re-Arrest of Accused

The court may order the arrest of an accused who has been released if it shall appear to the court that:

(**a**) There has been a breach of any condition for the release; or
(**b**) The bail should be increased or new or additional security be required or new conditions for release be imposed.

The accused, upon application, shall be entitled to a hearing concerning the reasons for the issuance of the order.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.22. Failure to Set Conditions or Setting of Excessive Conditions for Release - Application to Higher Court

(**a**) If a court shall fail to set conditions for release or shall set inadequate or excessive

conditions, an application may be filed in a higher court by the accused or by the prosecutor stating the grounds for the application and the relief sought. A copy of the application and the notice of the time when it will be presented to the court shall be served on all parties.

(**b**) If the higher court finds that the accused is entitled to be released and no conditions therefor have been set or that the conditions are excessive or inadequate, the court shall make an order setting or modifying conditions for the release of the accused.

(**c**) At the time of complying with the conditions of release set by the higher court, the accused shall file with the clerk a signed and acknowledged written instrument in which the accused shall specify the post office address to which all notices in connection with the case thereafter may be mailed. Proof of mailing notice to the accused at that address shall constitute sufficient notice to the accused in all cases where notice is required under this Rule 37.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004)

37.23. Transmittal of Record by Clerk of the Releasing Court

When any person is released by a court other than the court in which the person is to appear, the clerk of the releasing court shall transmit a record of the release, together with any conditions imposed, to the clerk of the court in which the person released is required to appear.

(Adopted May 14, 1985, eff. Jan. 1, 1986; Amended December 23, 2003, eff. July 1, 2004.)

37.24. Bonds - Where Filed - Certification by Peace Officer - Cash Bonds

The clerk of the court in which the accused is required to appear shall file all bonds. All bonds taken by a peace officer shall be certified by such officer and transmitted forthwith to the clerk of the court in which the accused is required to appear. When cash or securities specified in Rule 37.15 are taken they shall be delivered forthwith to the clerk

of the court in which the accused is required to appear and deposited in the registry of the court.

(Adopted May 14, 1985, eff. Jan. 1, 1986; Amended December 23, 2003, eff. July 1, 2004.)

37.25. Surrender of Principal by Surety

Whenever the surety upon any bond shall desire to surrender the principal, the surety may procure from the clerk a certified copy of said bond, by virtue of which such surety, or any person authorized by the surety, may take the principal into custody. If a bond is forfeited for the failure of the principal to appear as required by the bond and the surety produces the principal prior to the rendition of judgment upon the forfeiture and the surety pays all costs and expenses caused by the principal's failure to appear, the surety is discharged from further liability. When surrendering the principal to the peace officer, the surety must deliver a certified copy of the bond and the peace officer shall take the principal into custody and acknowledge acceptance of the principal in writing. Any principal so surrendered may be conditionally released pursuant to Rule 37.15.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.26. Bonds - Forfeiture - Procedural Notice - Judgment - Setting Aside Forfeiture

If there is a breach of a condition of a bond, the court in which the case is pending may declare a forfeiture of the bond. The court may direct that a forfeiture be set aside upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture. When a forfeiture has not been set aside, the court on the prosecutor's motion may enter a judgment of default and execution may issue thereon.

By entering into a bond the obligors submit to the jurisdiction of the court in which the defendant is required to appear and irrevocably appoint the clerk as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on the prosecutor's motion without the necessity of an independent action. The motion and notice of the hearing as the court prescribes may be served on the clerk, who shall

forthwith mail a copy to each of the obligors.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.27. Bond - Release of Obligors

When the conditions of the bond have been satisfied the court shall release the obligors. When a forfeiture of the bond is set aside, the court may release the obligors. Any surety may be released upon depositing cash in the amount of the bond or by a timely surrender of the defendant.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.28. Notice of Change of Address

Any defendant who has been released pending further proceedings and any surety for such defendant shall give written notice to the clerk of the court in which the case is pending of any change of address.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.29. Bonds - Surety, Individual - Qualifications

A person shall not be accepted as a surety on any bail bond unless the person:

(a) Is reputable, at least twenty-one years of age and a resident of the State of Missouri;

(b) Has net assets with a value in excess of exemptions at least equal to the amount of the bond that are subject to execution in the State of Missouri;

(c) Has not, within the past 15 years, been found guilty of or pleaded guilty or nolo contendere to:

(1) Any felony of this state or the United States; or

(2) Any other crime of this state or the United States involving moral turpitude, whether or not a sentence was imposed;

(d) Has no outstanding forfeiture or unsatisfied judgment thereon entered upon any bail bond in any court of this state or of the United States.

A lawyer, or an elected or appointed official or employee of the State of Missouri or any county or other political subdivision thereof shall not be accepted as a surety on any bail bond, except that, this disqualification shall not apply if the principal is the spouse, child or family member of the surety.

If there is more than one surety, the aggregate net worth of the sureties in excess of exemptions shall be at least equal to the amount of the bond.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004; May 30, 2006, eff. Jan. 1, 2007.)

37.30. Compensated Surety - Affidavit of Justification - Additional Investigation - Approval

If the surety has on file an affidavit relating to all bonds in force on the first day of the then current calendar month, the separate affidavit as to other bonds executed during such calendar month may be limited to the requirements of Rule 37.30(e) and appropriate reference shall be made therein to the separate affidavit of qualification currently relied upon to establish the surety's qualifications. The judge, clerk or officer who is authorized to take and approve the bond shall administer the oath to such affidavit. The affidavit shall be on a suitable form, which shall be provided. In addition to the matters specified in Rule 37.29, it shall contain:

(a) An accurate legal description of the real estate that the surety proposes to justify as to the surety's sufficiency, together with a description of the improvements located thereon, and the location of the property by street address if it is located in a city or town;

(b) The latest assessed value of such property;

(c) An accurate description of the personal property that the surety proposes to justify

as to the surety's sufficiency and a statement of its reasonable market value;

(**d**) A list of all bail bonds upon which the surety is surety and upon which the surety's obligation remains undischarged, the amount of each bond, the name of the principal or defendant, the ordinance violation charged, and the court in which such bond is pending; and

(**e**) A statement whether or not the surety or anyone for the surety's use has been promised or has received any consideration or security for suretyship, and if so, the nature and amount thereof, and the name of the person by whom such promise was made or from whom such security or consideration was received.

The judge, clerk, or officer to whom such affidavit of justification is submitted may make such additional investigation concerning the qualifications of the surety as thought to be necessary and, for this purpose, shall have authority to administer all necessary oaths.

No bond shall be approved unless the surety thereon appears to be qualified under the requirements of Rule 37.14 to 37.32, inclusive.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.31. Bonds - Affidavit of Justification - Record

When a surety is accepted upon a bond, the surety shall execute an affidavit of justification that shall be attached to the bond and filed therewith by the clerk of the court in accordance with the provisions of Rule 37.24. A duplicate copy of such affidavit shall be preserved in a separate file in the office of the clerk of the court in which such bond is first filed, indexed alphabetically by the names of the sureties. Such file shall be open to the inspection of any interested person.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1,

2004.)

37.32. Bond - Surety Company and Agent – Qualifications

(**a**) Any corporation qualified under the provisions of section 379.010, RSMo, including the requirement that it produce evidence of its solvency satisfactory to the court, shall be qualified to act as a surety upon any bail bond taken under the provisions of this Rule 37. Any such bond shall be executed by a surety company in the manner provided by law.

(**b**) An agent acting on behalf of such a corporation shall be subject to the qualifications set forth in Rule **37.29(a), (c) and (d)** and, in addition, shall be licensed as a bail bond agent as required by law.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 17, 1985, eff. Jan. 1, 1987; Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

37.33. Violation Notice – Contents

(**a**) A violation notice shall be in writing and shall:
(1) State the name and address of the court;
(2) State the name of the prosecuting county or municipality;
(3) State the name of the accused or, if not known, designate the accused by any name or description by which the accused can be identified with reasonable certainty;
(4) State the date and place of the ordinance violation as definitely as can be done;
(5) State the facts that support a finding of probable cause to believe the ordinance violation was committed and that the accused committed it;
(6) State that the facts contained therein are true;
(7) Be signed and on a form bearing notice that false statements made therein are punishable by law;
(8) Cite the chapter and section of the ordinance alleged to have been violated and the chapter and section that fixes the penalty or punishment; and
(9) State other legal penalties prescribed by law may be imposed for failure to appear and dispose of the violation.

(**b**) When a violation has been designated by the court to be within the authority of a violation bureau pursuant to Rule 37.49, the accused shall also be provided the

following information:

(1) The specified fine and costs for the violation; and

(2) That a person must respond to the violation notice by:

(A) Paying the specified fine and court costs; or

(B) Pleading not guilty and appearing at trial.

(**c**) The violation notice shall be substantially in the form of the Uniform Citation set out in Form 37.A, with such additions as may be necessary to adapt the Uniform Citation to the jurisdiction involved.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

37.34. Ordinance Violations - Information

All ordinance violations shall be prosecuted by information. An information charging the commission of an ordinance violation may be based on the prosecutor's information and belief that the ordinance violation was committed. The information shall be supported by a violation notice as prescribed by Rule 37.33.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

{Formerly titled "Information."}

37.35. Information - Form of – Contents

(**a**) The information shall be in writing, signed by the prosecutor and filed in the court having jurisdiction of the ordinance violation.

(**b**) The information shall:

(1) State the name of the defendant or, if not known, designate the defendant by any name or description by which the defendant can be identified with reasonable certainty;

(2) State plainly, concisely, and definitely the essential facts constituting the ordinance violation charged, including facts necessary for any enhanced punishment;

(3) State the date and place of the ordinance violation charged as definitely as can be done;

(4) Cite the chapter and section of the ordinance alleged to have been violated and the chapter and section providing the penalty or punishment.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.36. Information - Joinder of Violations

All ordinance violations that are of the same or similar character or based on the same act or on two or more acts that are part of the same transaction or on two or more acts or transactions that are connected or that constitute parts of a common scheme or plan may be charged in the same information in separate counts.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.37. Information - Joinder of Defendants

Two or more defendants may be charged in the same information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an ordinance violation or violations. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.38. Information - Incorrect Name of Defendant

Any defendant charged in an information under an incorrect name may furnish the defendant's correct name, and the correct name shall be substituted in the information. The defendant's failure to furnish the correct name shall not invalidate the proceedings.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.39. Information - Amendment - Delay

Any information charging an ordinance violation may be amended at any time before verdict or finding if:

(a) No additional or different ordinance violation is charged, and

(b) A defendant's substantial rights are not thereby prejudiced.

No such amendment shall cause delay of a trial unless the court finds that a defendant needs further time to prepare a defense by reason of such amendment.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.40. Information - Unavailability of Original

If the original information is unavailable for any reason, a copy, certified by the clerk or by the prosecutor, may be substituted.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.41. Information - Nonprejudicial Defects

An information shall not be invalid, nor shall the trial, judgment, or other proceedings on the information be stayed, because of any defect that does not prejudice the substantial rights of the defendant.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.42. Summons - Contents

The summons shall:

(a) Be in writing and in the name of the prosecuting county or municipality;

(b) State the name of the person summoned and the address, if known;

(c) Describe the ordinance violation charged;

(d) Be signed by a judge or by a clerk of the court when directed by a judge; and

(e) Command the person to appear before the court at a stated time and place in response thereto.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.43. Ordinance Violation - Summons or Arrest Warrant - When Issued - Failure to Appear

When an information charging the commission of an ordinance violation is filed pursuant to Rule 37.34, a summons shall be issued unless the court finds that there are:

(a) Sufficient facts stated to show probable cause that an ordinance violation has been committed, and

(b) Reasonable grounds for the court to believe that the defendant will not appear upon the summons, or a showing has been made to the court that the accused poses a danger to a crime victim, the community, or any other person.

If the court so finds, a warrant for the arrest of the defendant may be issued.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended June 16, 1998, eff. July 1, 1999. Amended December 23, 2003, eff. July 1, 2004.)

{Formerly titled "Summons - When Issued - Failure to Appear."}

37.44. Summons - Service and Return

A summons may be served by:

(a) The clerk mailing it to defendant's last known address by first class mail; or

(b) An officer in the manner provided by Rule 54.13 or Rule 54.14.

If the defendant fails to appear in response to a summons and upon a finding of probable cause that an ordinance violation has been committed, the court may issue an arrest warrant.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.45. Warrant of Arrest – Contents

(a) The warrant of arrest shall be in writing and issued in the name of the prosecuting county or municipality. It may be directed to any peace officer in the state.

(b) The warrant shall:

(1) Contain the name of the person to be arrested or, if not known, any name or description by which the defendant can be identified with reasonable certainty;
(2) Describe the ordinance violation charged in the information;
(3) State the date when issued and the jurisdiction where issued;
(4) Command that the defendant named or described therein be arrested and brought forthwith before the court designated in the warrant;
(5) Specify the conditions of release; and
(6) Be signed by a judge or by a clerk of the court when directed by the judge for a specific warrant.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.46. Warrant of Arrest - Service

All warrants ordered for an ordinance violation may be directed to any peace officer in the state.

The warrant shall be executed by the arrest of the defendant.

A warrant may be executed anywhere in the state by any peace officer.

The peace officer need not possess the warrant at the time of the arrest, but upon request the officer shall show the warrant to the defendant as soon as possible. If the peace officer does not possess the warrant at the time of the arrest, the officer shall inform the defendant of the ordinance violation charged and the fact that a warrant has been issued.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.47. Initial Proceedings Before a Judge

(**a**) Appearance Under Warrant Before Judge. A person arrested under a warrant for an ordinance violation who does not satisfy conditions for release shall be brought as soon as practicable before a judge of the court from which the warrant was issued. The warrant, with proper return thereon, shall be filed with the court.

(**b**) Statement of Judge. Upon the defendant's initial appearance, the judge shall inform the defendant of:

(1) The ordinance violation charged,
(2) The right to retain counsel,
(3) The right to request the appointment of counsel if:
(A) The defendant is indigent and unable to employ counsel, and
(B) There is a possibility of a jail sentence, and
(4) The right to remain silent.

The judge shall also inform the defendant that any statement made by the defendant may be used against the defendant.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.48. Arraignment

Arraignment shall be conducted in open court and shall consist of reading the information to the defendant or stating the substance of the charge and calling on the defendant to plead thereto. Defendant shall be afforded a reasonable time to examine the charge before defendant is called upon to plead.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

{Formerly titled "Summons or Information - Arraignment."}

37.49. Violation Bureau - Violations Clerk - Schedule of Fines - Payment

(**a**) Any judge having original jurisdiction of any animal control violation, housing violation, or traffic violation may establish by court order a violation bureau, which shall be subject to the supervision of the circuit court.

(**b**) The judge shall designate a clerk. The clerk shall perform the duties designated by the court, including accepting appearance, waiver of trial, plea of guilty, and payment of fine and costs for the designated violations, entering the plea on the record, and transmitting the violation record as required by law, subject to the limitations hereinafter prescribed.

(**c**) The violations within the authority of the bureau shall be designated by order of the judge. Such designated violations may be amended from time to time but shall in no

event include the following:

(1) Any violation resulting in personal injury or property damage;
(2) Operating a motor vehicle while intoxicated or under the influence of intoxicants or drugs;
(3) Operating a vehicle with a counterfeited, altered, suspended, or revoked license;
(4) Fleeing or attempting to elude an officer; and
(5) Any other violation excluded by law.

(**d**) The judge, by order prominently posted at the place where the fines are to be paid, shall specify by schedule the amount of fines and costs to be imposed for each violation.

(**e**) Within the time fixed by the judge and subject to the judge's order, any person charged with an animal control, housing, or traffic violation, except violations requiring court appearance, may deliver by mail, automatic teller machine, or as otherwise directed the specified amount of the fine and costs to the bureau. This delivery constitutes a guilty plea and waiver of trial.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

{Formerly titled "Traffic Violations Bureau - Violations Clerk - Schedule of Fines - Payment."}

37.50. Right to Counsel - Appointment of Counsel

In a prosecution for an ordinance violation, the defendant shall have the right to appear and defend in person and by counsel.

If any person charged with an ordinance violation, whose conviction would possibly result in confinement, shall be without counsel upon a first appearance before a judge, it shall be the duty of the judge to advise the defendant of the right to counsel and of the willingness of the judge to appoint counsel to represent the defendant if the defendant is unable to employ counsel. Upon a showing of indigency, it shall be the duty of the judge to appoint counsel to represent the defendant.

If, after being informed of the right to counsel, the defendant requests to proceed without the benefit of counsel and the judge finds that the defendant has knowingly, voluntarily

and intelligently waived the defendant's right to have counsel, the judge shall have no duty to appoint counsel. If at any stage of the proceedings it appears to the judge before whom the matter is then pending that because of the gravity of the ordinance violation charged and other circumstances affecting the defendant the failure to appoint counsel may result in injustice to the defendant, the judge shall then appoint counsel. Appointed counsel shall be allowed a reasonable time in which to prepare the defense.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.51. Pleadings and Motions Before Trial - Defenses and Objections - Hearing on Motion

(a) Pleadings. Pleadings shall be the information and plea thereto.

(b) Motion Raising Defenses and Objections.

(1) *Defenses and Objections That May Be Raised.* Any defense or objection that is capable of determination without trial of the general issue may be raised before trial by motion.

(2) *Defenses and Objections That Must Be Raised.* Defenses and objections based on defects in the institution of the prosecution or in the information other than that it fails to show jurisdiction in the court or to charge an ordinance violation may be raised only by motion before trial.

The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver.

(3) *Time of Making Motion.* The motion shall be made before the plea is entered, but the judge may permit it to be made within a reasonable time thereafter.

(4) *Hearing on Motion.* The motion shall be heard and determined before trial on application of the prosecutor or the defendant, unless the court orders that the hearing and determination be deferred until the trial.

(5) *Matters That Shall Be Noticed by the Court.* Lack of jurisdiction or the failure of the information to charge an ordinance violation shall be noticed by the court at any time during the pendency of the proceeding.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.52. Motions to Suppress

Requests that evidence be suppressed shall be raised by motion before trial; however, the court in the exercise of discretion may entertain a motion to suppress evidence at any time during trial.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.53. Ordinance Violation Cases Not Heard on the Record - Disqualification and Change of Judge

(**a**) This Rule 37.53 governs the procedure for disqualification of a judge in all ordinance violation cases, except those heard de novo or those in which there is a timely exercise of a right to a jury trial.
(**b**) Without Application. If the judge is related to any defendant or has an interest in or has been counsel in the case, the judge shall recuse.
(**c**) With Application – Procedure. A change of judge shall be ordered upon the filing of a written application therefor by any party. The applicant need not allege or prove any reason for such change.

The application need not be verified and may be signed by any party or an attorney for any party.

The application must be filed not later than ten days after the initial plea is entered.

If the designation of the trial judge occurs less than ten days before trial, the application may be filed any time prior to trial. If the designation of the trial judge occurs more than ten days after the initial plea is entered, the application shall be filed within ten days of the designation of the trial judge or prior to the commencement of any proceeding on the record, whichever is earlier.

No party shall be allowed more than one change of judge pursuant to this Rule 37.53(c). However, no party shall be precluded from requesting any change of judge for cause at any time.

(**d**) When a timely application for a change of judge is filed or a judge recuses, the judge shall:

(1) Comply with any circuit court rule that provides for the assignment of a judge; or
(2) Notify the presiding judge of the circuit who shall designate a judge to hear the case or request this Court to transfer a judge to hear the case.

(e) If an associate circuit judge or a circuit judge is designated to try the case, the designated judge shall determine the location of the trial at a place within the county.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.54. Discovery

Discovery shall be permitted solely in the judge's discretion as justice requires.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.55. Process for Witnesses - Subpoena Duces Tecum - Service - Return - Failure to Appear - Hearing Continuance - Contempt

The prosecutor and the defendant shall be entitled to process for witnesses as follows:

(a) **For Attendance of Witnesses; Form; Issuance.** A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title of the proceedings and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein.

The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) **For Production of Documentary Evidence and of Objects.** A subpoena duces tecum may also command the person to whom it is directed to produce the books, papers, documents, or other objects designated therein.

(c) **Modification of Subpoena.** The court may quash or modify a subpoena if compliance would be unreasonable or oppressive.

The court may direct that books, papers, documents, or objects designated in a subpoena duces tecum be produced before the court at a time prior to the trial or prior to the time when they are offered in evidence. Upon their production the court may permit the books, papers, documents, or objects, or portions thereof to be inspected by the parties or their attorneys.

(d) Service – Tender of Fees and Mileage Not Required. A subpoena may be served by any peace officer or by any other person who is not a party and who is not less than 18 years of age. A subpoena may be served any place within the state.

Fees and mileage need not be tendered to the witness upon service of a subpoena.

The service of a subpoena shall be by reading the same or delivering a copy thereof to the person to be summoned. If the witness shall refuse to hear such subpoena read or to receive a copy thereof, the offer of the officer or other person to read the same or to deliver a copy thereof and such refusal shall be sufficient service of such subpoena.

(e) Return.

(1) Every officer to whom a subpoena is delivered for service shall make return thereof in writing as to the time, place, and manner of service of the subpoena, and shall sign the return.
(2) If a person other than an officer makes service of the subpoena, he or she shall make affidavit as to the time, place, and manner of service.

(f) Contempt. Any person who does not obey a subpoena without good cause shall be subject to contempt of court proceedings.

(g) Continuing Obligation to Attend. Whenever a witness in a proceeding has been once subpoenaed or required to give bail to appear before the court, the witness shall attend from time to time until the case is disposed or the witness is finally discharged by the judge. The witness shall be liable to attachment and bail may be forfeited for failure to appear if the witness has received notice of the time and place to appear.

If the trial is continued, the judge shall orally notify such witnesses present as either party requests to attend on the new date set for hearing to give testimony. The oral notice shall be valid as a summons. The names of the witnesses so notified shall be entered on the docket.

It shall be the sole responsibility of the respective parties or their attorneys to notify any witnesses not orally notified by the judge of the new date set for hearing, and court process shall be provided for such purpose when requested.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1,

2004.)

37.56. Continuances

The prosecution and defense in each case shall have the right to a speedy trial. Continuances may be granted for good cause shown.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.57. Presence of Defendant - When Required

No defendant shall either be tried or permitted to enter a plea of guilty unless the defendant is personally present or the judge, defendant, and prosecutor consent to such trial or plea in the defendant's absence. The defendant's presence in the courtroom shall not be required in the event of a reduction of sentence.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.58. Pleas

(a) Alternatives. A defendant may plead not guilty or guilty. If a defendant refuses to plead or if a corporation fails to appear, the court shall enter a plea of not guilty.

(b) Advice to Defendant. Except as provided by Rule 37.49 or Rule 37.57, before accepting a plea of guilty, the judge shall address the defendant personally in open court. The judge shall inform the defendant of the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

(2) The defendant's right to be represented by an attorney and that the judge will appoint an attorney for the defendant if defendant is indigent and if it appears to the judge that there would possibly be a jail sentence upon conviction; and

(3) That if defendant pleads guilty there will not be a trial of any kind, so that by pleading guilty the defendant waives the right to a trial, and

(4) The defendant's right to plead not guilty or to persist in that plea if it has

already been made.

The judge shall further inform defendant of any right to a jury trial, the right to present witnesses on behalf of the defendant, that defendant has the right to confront and cross-examine witnesses against defendant, that defendant has the right to testify and that nobody can compel defendant to testify.

The judge shall determine whether the defendant understands, upon oral or written information provided, the matters presented.

(c) Ensuring That the Plea is Voluntary. Except as provided by Rule 37.49 or Rule 37.57, the judge shall not accept a plea of guilty unless the judge finds that said plea is knowingly, voluntarily, and intelligently made and not the result of force or threats or promises.

(d) Waiver of Counsel. If the defendant would possibly receive a jail sentence upon conviction, the judge shall determine, before accepting the defendant's plea of guilty or not guilty, that the defendant has made a knowledgeable, voluntary, and intelligent waiver of the right to assistance of counsel.

Prior to making the finding, the judge shall review with the defendant a written waiver of counsel.

If the judge finds the waiver is knowingly, voluntarily, and intelligently made, the waiver shall be signed by the defendant, witnessed by the judge or the clerk at the judge's direction, and appropriately recorded. The written waiver of counsel shall be substantially in the form as set out in Form 37.C.

(e) Plea Agreement Procedure. The judge shall not participate in any plea agreement discussions, but after a plea agreement has been reached the judge may discuss the agreement with the attorneys including any alternative that would be acceptable.

(1) *In General.* The prosecutor and the attorney for the defendant or the defendant acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged ordinance violation or to a lesser or related ordinance violation, the prosecutor will do any of the following:

(A) Dismiss other charges; or

(B) Make a recommendation, or agree not to oppose the defendant's request for a particular sentence with the understanding that such recommendation or request shall not be binding on the judge; or

(C) Agree that a specific sentence is the appropriate

disposition of the case; or

(D) Make a recommendation for, or agree on, another appropriate disposition of the case.

(2) *Disclosure of Plea Agreement – Court's Actions Thereon.* If the parties have reached a plea agreement, the judge shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera at the time the plea is offered. If the agreement is pursuant to Rule 37.58(e)(1)(B), the judge shall advise the defendant that the plea cannot be withdrawn if the judge does not adopt the recommendation or request. Thereupon the judge may accept or reject the agreement or may defer a decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report.

(3) *Acceptance of a Plea Agreement.* If the judge accepts the plea agreement, the judge shall inform the defendant that the judge will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) *Rejection of a Plea Agreement.* If the judge rejects the plea agreement, the judge shall inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera that the judge is not bound by the plea agreement, afford the defendant the opportunity to then withdraw the plea if it is based on an agreement pursuant to Rule 37.58(e)(1)(A), (C), or (D), and advise the defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) *Inadmissibility of Pleas, Offers of Pleas, and Related Statements.* Except as otherwise provided in this subdivision, evidence of a plea of guilty, later withdrawn, or of offer to plead guilty to the ordinance violation charged or of any other ordinance violation, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to a plea of guilty, later withdrawn, or an offer to plead guilty to the ordinance violation charged or any other ordinance violation, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and in the presence of counsel.

(f) Determining Accuracy of Plea. The judge shall not enter a judgment upon a plea of guilty without first determining that there is a factual basis for the plea.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1,

2004.)

{Formerly titled "Plea Negotiations."}

37.59. [RESERVED]

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

{Formerly titled "Pleas."}

37.60. Severance

If two or more defendants are charged in an information, all defendants shall be tried together unless the court orders a defendant to be tried separately. A defendant shall be ordered to be tried separately only if the defendant files a written motion requesting a separate trial and the court finds a probability of prejudice exists.

If a defendant is charged with more than one ordinance violation in the same information, the violations shall be tried jointly unless the court orders a violation to be tried separately. A violation shall be ordered to be tried separately only if:

(a) A party files a written motion requesting a separate trial of the offense;

(b) A party makes a particularized showing of substantial prejudice if the violation is not tried separately; and

(c) The court finds the existence of a bias or discrimination against the party that requires a separate trial of the violation.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.61. Trials - Issues of Fact - Jury - Certification

(**a**) All trials of ordinance violations shall be held in open court in an orderly manner according to law.

(**b**) If practical, traffic cases shall be heard and tried separately from other types of cases. Where a particular session of court has been designated a traffic case session, only traffic cases shall be tried except for good cause shown.

(**c**) The judge shall determine all issues of fact in ordinance violation cases unless a jury trial is authorized by law and requested by the defendant.

(**d**) A request for a jury trial shall be made by motion filed at least ten days prior to the scheduled trial date. If the designation of the trial date occurs less than ten days before trial, the application may be filed any time prior to trial. The judge shall promptly rule on a motion for jury trial. If the motion is sustained, the case shall be certified to the presiding judge for assignment for trial by jury unless otherwise provided by statute.

(**e**) All jury trials shall proceed in the manner provided for the trial of a misdemeanor by the rules of criminal procedure.

(**f**) If the defendant files a written motion so requesting and attaches thereto a waiver of the right to a jury trial, the case may be remanded to the municipal division for trial.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

37.62. Order of Trial

The order of trial in nonjury ordinance violation cases shall be as follows:

(**a**) The prosecutor may make an opening statement. The defendant may make an opening statement or reserve it.

(**b**) The prosecutor shall offer evidence.

(**c**) The defendant may move for judgment of acquittal.
(**d**) The defendant may make an opening statement, if reserved.
(**e**) Evidence may be offered on behalf of the defendant.
(**f**) The parties, respectively, may offer evidence in rebuttal.
(**g**) The defendant may move for judgment of acquittal.
(**h**) The court may fix the length of time for arguments and shall announce it to counsel. The prosecutor shall make the opening argument, the attorney for the defendant shall make an argument, and the prosecutor for the state shall conclude the argument. Each party may waive the right to argument.
(**i**) The judge pronounces judgment.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.63. Failure of Defendant or Defendant's Spouse to Testify

(**a**) If the defendant shall not avail himself or herself of the right to testify or of the testimony of the wife or husband on the trial in the case, it shall not be construed to affect the innocence or the guilt of the defendant nor shall the same raise any presumption of guilt, nor be referred to by any party or attorney in the case, nor be considered by the court or jury before whom the trial takes place.
(**b**) If the defendant does not testify and the defendant so requests, but not otherwise, the court shall instruct the jury in writing as follows:

"Under the law, a defendant has the right not to testify. No presumption of guilt may be raised and no inference of any kind may be drawn from the fact that defendant did not testify."

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

{Formerly titled "Failure of Accused or Wife to Testify."}

37.64. Sentence and Judgment

(a) Pre-sentence Investigation.

(1) *When Made.* When a probation or parole officer is available to the judge and upon the direction of the judge, the officer shall make a pre-sentence investigation and report to the judge before the imposition of sentence or the granting of probation. The report shall be submitted to the court only after the defendant has pleaded guilty or has been found guilty.
(2) *Report.* The report of the pre-sentence investigation shall contain such information as the judge shall request. Before making any authorized disposition, the judge, upon request of defendant or the attorney for

defendant, shall allow the defendant and the attorney for the defendant access to the complete pre-sentence investigation report and recommendations.

(b) Sentence. Sentence shall be imposed without unreasonable delay. A defendant must be personally present when sentence and judgment are pronounced unless the judge, the prosecutor, and the defendant consent to the absence of the defendant.

(c) Notification of Right to Trial De Novo. After imposing sentence, the judge shall advise the defendant of any right to trial de novo and the right of a defendant who is unable to pay the cost the right to proceed as an indigent.

(d) Judgment. A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly.

(e) Probation and Parole. If authorized by law, the judge may suspend the imposition of sentence or execution of sentence and place the defendant on probation or parole for a term not to exceed two years.

(f) Stay of Sentence. The court in which any judgment, whether of imprisonment or fine, was rendered may grant, by an order entered of record and signed by the judge, a stay of execution upon such judgment or portion thereof for a specified period or periods of time, not to exceed six months. The judge may require the defendant to enter into a bond conditioned upon surrender of the defendant in execution upon such judgment on a day to be specified in such order.

(g) Conviction of Two or More Sentences. When pronouncing sentence, the judge shall state whether the sentence shall run consecutively or concurrently with sentences on one or more ordinance violations for which defendant is being sentenced or for which defendant has been previously sentenced. If the judge fails to do so at the time of pronouncing the sentences, the respective sentences shall run concurrently.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1,

2004.)

37.65. Fines, Installment or Delayed Payments - Response to Nonpayment

(**a**) When a fine is assessed for violation of an ordinance, it shall be within the discretion of the judge assessing the fine to provide for the payment of the fine on an installment basis under such terms and conditions as the judge may deem appropriate.

(**b**) If it appears to the judge imposing judgment assessing a fine that the defendant does not have at that time the present means to satisfy the fine, the judge assessing the fine may order a stay of execution on the judgment and grant the defendant a specified period of time within which to satisfy the same.

(**c**) If a defendant defaults in the payment of the fine, the judge may order the defendant to show cause why the defendant should not be held in contempt of court.

(**d**) Upon default in the payment of a fine or any installment thereof, the fine may be collected by any means authorized by law, including means for the enforcement of money judgments.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.66. Sentence of Imprisonment - Transcript to Corrections Official

When a defendant is sentenced to imprisonment, the clerk shall deliver to the corrections official a certified copy of the judgment and sentence, specifying credit for time served, and the corrections official shall confine the defendant in a detention facility or deliver the defendant as specified in the order.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.67. Judgment Set Aside - When

(**a**) Within ten days after the entry of judgment and prior to the filing of application for trial de novo, the court may of its own initiative or on motion of a defendant set aside judgment upon any of the following grounds:

(1) That the facts stated in the information filed and upon which the cause was tried do not state an ordinance violation;

(2) That the court was without jurisdiction of the ordinance violation charged;

(3) To correct manifest injustice.

The court shall record the grounds upon which the order was entered.

(**b**) A motion to withdraw a plea of guilty may be made only before sentence is imposed or when imposition of sentence is suspended; but to correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw the defendant's plea.

(**c**) Clerical mistakes in the record and errors in the record arising from oversight or omission may be corrected by the court any time on the motion of any party and after such notice, if any, as the court orders.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.68. [RESERVED]

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.69. Judgment - Commutation

After commitment of a defendant to serve a sentence of imprisonment, the judge may commute the term of the sentence to the time then served.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.70. Revocation of Probation or Parole

A judge may revoke probation or parole upon compliance with section 559.036 RSMo, but not otherwise, except that notice of the hearing may be mailed in the same manner as a summons. The defendant may be conditionally released pending final hearing.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.71. Trial De Novo - Right - Time

(a) An application for trial de novo shall be filed as provided by law. No judge may order an extension of time for filing or perfecting an application for trial de novo.

(b) An application for trial de novo shall not be granted after the defendant satisfies any part of the penalty and costs of the judgment.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000. Amended December 23, 2003, eff. July 1, 2004.)

37.72. Trial De Novo - Stay of Execution

The filing of an application for trial de novo or review shall suspend the execution of the judgment of the municipal division. If the applicant for trial de novo withdraws the application, or if before commencement of trial, the court enters a finding that the applicant has abandoned the trial de novo, the case shall be remanded to the municipal division for execution of judgment.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended Dec. 18, 1998, eff. Jan. 1, 2000.

Amended December 23, 2003, eff. July 1, 2004.)

37.73. Trial De Novo - Transmittal of Record

When an application for trial de novo is filed, the clerk shall transmit the duly certified record to the clerk of the division designated to hear ordinance violations de novo. The failure of the clerk to transmit the record shall not affect the defendant's trial de novo.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.74. Trial De Novo - Procedure

All trials de novo shall proceed in the manner provided for the trial of a misdemeanor by the rules of criminal procedure.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004.)

37.75. Criminal Contempt

(**a**) A criminal contempt may be punished summarily if the judge certifies that the judge saw or heard the conduct constituting the contempt and that it was committed in the judge's presence. The judgment of contempt and the order of commitment shall recite the facts and shall be signed by the judge and entered of record.

(**b**) All other instances of contempt shall be prosecuted on notice. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a finding of guilt, the judge shall recite in the judgment of contempt and in the order of commitment the essential facts constituting the criminal contempt and fixing the punishment.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1,

2004.)

COURT OPERATING RULES

Court Operating Rule 4
UNIFORM RECORD KEEPING SYSTEM

4.04 FILE NUMBERS

4.04.1 Courts Using an Automated Case Management System Approved for Statewide Use by the State Judicial Records Committee

1) Converted Construct

Numbers assigned prior to implementation of the automated case management system and entered into the automated system shall be converted in substantially the following format:

a) 2-digit circuit number;

b) Alphabetic code reflecting the case category:

Case Category	Code
Criminal	R
Traffic	T
Civil	V
Juvenile	J
Probate	P
Mental Health	H
Municipal Traffic	M
Municipal Ordinance	O
Municipal Criminal	U
Administrative Orders	AO
Transcript Judgments	TJ
Mechanics'/Materialmen's Liens	ML

c) 2-digit physical filing location number as assigned by the Office of State Courts Administrator;

d) 2-digit numeric code representing the year that the case was filed, e.g., "02" for cases filed in 2002; and

e) Same consecutive number assigned to the case when filed.

3) New Construct

b) The following comprise the minimum list of 2 digit case categories used in the circuit:

Case Category	Code
Criminal	CR
Traffic	TR
Civil	CV
Juvenile	JU
Probate	PR
Municipal Ordinance	MU
County Ordinance	CY
Miscellaneous	MC
Juvenile Referral	JR
Treatment Court	TC

4.04.2 Courts Not Using an Automated Case Management System Approved by the State Judicial Records Committee

1) A uniform case numbering system, comprised of the following, shall be used:

a) 2-digit alphabetic prefix for the case category:

Case Category	Prefix
Criminal	CR
Civil	CV
Juvenile	JU
Municipal	MU

(6) Within the municipal category, the following suffixes shall be used:

Case Type	Suffix
Traffic	MT
Other Ordinance	MO

3) Cases originating in a municipal court shall be assigned a new case number when transferred to an associate or circuit division.

4.28 REPORTING TO THE OFFICE OF STATE COURTS ADMINISTRATOR

Courts shall report case information to the Office of State Courts Administrator. Reporting requirements shall be approved by the State Judicial Records Committee.

4.29 MUNICIPAL DIVISION REPORTING TO THE MUNICIPALITY

On or before the 15th of each month, the Municipal Division shall submit to the municipality a copy of the monthly case load summary report for the preceding month required by Court Operating Rule 4.28.

Court Operating Rule 6
MODEL LOCAL COURT RULES

4.2 CIVIL CASES

CIVIL
(ALTERNATIVE 1)

There shall be a central filing room in the office of the circuit clerk where all cases and pleadings, motions, and papers related thereto shall be filed, except small claims.

(ALTERNATIVE 2)

All civil cases to be initially heard on the record, including a) uncontested dissolution of marriage, legal separation or separate maintenance proceedings; b) uncontested motions to modify decrees of dissolution of marriage, legal separation, separate maintenance, child custody and child support; c) proceedings for change of name; d) juvenile proceedings [in counties of less than 70,000 inhabitants]; e) uncontested proceedings for the approval of settlement of suits involving claims by persons under 18 years of age; f) uncontested actions involving the title to real estate; and g) all civil actions where the sum demanded, exclusive of interest and costs, does not exceed $5,000; and all actions against any railroad company to recover damages for killing or injuring animals, where the plaintiff at the time of filing so designates in writing, shall be filed with the circuit clerk of the appropriate county.

All civil cases to be heard initially not on the record, including a) all civil actions where the sum demanded, exclusive of interest and costs, does not exceed $5,000 and all actions against any railroad company to recover damages for killing or injuring animals, unless the plaintiff designated in writing at the time of filing, that the case is to be heard on the record; b) all cases of misdemeanor or infraction, except as otherwise provided by law; c) felony cases prior to the filing of the information; d) municipal ordinance violation cases of a municipality which has not provided for a municipal judge; e) "small claims" cases; f) other cases that could be heard and determined by a magistrate judge without assignment as an active circuit judge under provisions of law and in effect on January 1,

1979, including but not limited to replevin, attachment and mechanic's lien actions where the recovery sum is less than $5,000; g) actions for unlawful detainers authorized by Chapter 534, RSMo.; h) actions for rent and possession authorized by Chapter 535, RSMo.; i) petitions for review of driver's license revocations and for hardship driving privileges; [j) cases that a circuit judge can hear in chambers when the circuit judge is absent from the county of less than 70,000 inhabitants;] and [k)] other cases as may otherwise specifically be provided by law for associate circuit judges to hear and determine,[2] shall be filed with the division clerk of the associate division of the appropriate county.[3]

4.6 MUNICIPAL CASES

Municipal ordinance violation cases shall be filed with the clerk of the appropriate municipal division when that municipality has made provisions for a municipal judge as provided by law. If the municipality has not made such provisions, the filing shall be with the clerk of the appropriate division presided over by the associate circuit judge. (Insert the central filing clerk from the associate division if appropriate.) Municipal traffic violation cases may be disposed of in the Municipal Traffic Violations Bureau in the cities of _____, in accordance with Section 479.050, RSMo 1978.

6.1 ASSIGNMENT TO ASSOCIATE CIRCUIT JUDGES
6.1.1 BY LOCAL COURT RULES OR ORDER.

The following cases will be heard by an associate circuit judge not on the record under the procedure applicable under Chapter 517, RSMo.:

(1) Civil actions where the sum demanded, exclusive of interest and costs, does not exceed five thousand dollars;
(2) actions against any railroad company to recover damages for killing or injuring animals;
(3) replevin, attachment and mechanic's lien action where the recovery sought is less than five thousand dollars;
(4) actions for unlawful detainer authorized by Chapter 534 RSMo.;
(5) actions for rent and possession authorized by Chapter 535 RSMo.;
(6) petitions for review of driver's license revocations and for hardship driving privileges;
(7) such other cases that could be heard and determined by an associate circuit judge without assignment as an acting circuit judge under provisions of the law in effect on January 1, 1979.

In addition to the above cases, an associate circuit judge shall hear and determine the following cases:

(1) Cases of misdemeanor or infraction, except as otherwise provided by law;
(2) felony cases prior to the filing of an information;
(3) municipal ordinance violation cases of the following municipalities: (List

municipalities) [Only for those cities with a population of under four hundred thousand when provision is not made for a municipal judge];
(4) "small claims" cases as provided in Chapter 482 through Section 482.365 RSMo 1978 ;
(5) cases that a circuit judge can hear in chambers when a circuit judge is absent from the county [in counties of less than seventy thousand inhabitants.]

The associate circuit judges of this circuit shall hear and determine the following cases on the record under procedures applicable before circuit judges:
(1) Cases arising under the uniform reciprocal enforcement of support act;
(2) cases arising under Chapters 207 and 208 RSMo.;
(3) contempt actions for child support enforcement in addition to those arising under paragraphs (1) and (2) above;
(4) approval of settlements in actions involving claims by or on behalf of minors;
(5) change of name proceedings;
(6) appeals from the municipal division;
(7) uncontested dissolutions of marriage, legal separation or separate maintenance proceedings;
(8) uncontested actions involving the title to real estate;
(9) cases assigned to an associate circuit judge by the presiding judge;
(10) adversary proceedings in the probate division.7

100.1 PRESIDING JUDGE

100.1.2 DUTIES OF PRESIDING JUDGE

The presiding judge is the general administrative authority of the court. In this function he shall 1) preside at all court en banc meetings, 2) supervise and appoint any needed committees, 3) supervise preparation of the budget, 4) coordinate all duties and vacations of personnel, 5) handle media and government contacts, 6) standardize procedures between divisions [and 7) _____.]

The presiding judge has the authority to assign cases to judges and judges to division, but he is not to assign 1) a municipal judge to hear any case other than to initially hear municipal ordinance violation cases, 2) a judge to try a felony case when he has conducted the preliminary hearing, 3) a case to a judge contrary to Supreme Court Rule or local circuit court rules, 4) a case to a probate judge if case is not within § 472.020, RSMo 1978, unless the probate judge consents and he was a probate judge on January 1, 1979.

The meetings of the court en banc may be called by the presiding judge or by two judges giving written notice. If any judge so requests the meeting will be on the record. The presiding judge has one vote and a majority vote rules. The presiding judge may call a special term of court. The presiding judge may appoint a secretary and any additional personnel to aid in the judicial business of the circuit.

Court Operating Rule 8
RECORDS RETENTION AND DESTRUCTION

8.02 DEFINITIONS

(A) **Confidential Records**. Such records include:

(1) Case records that are closed to the public by chapter 610, RSMo;

(2) Mental health records under section 630.140, RSMo;

(3) Records pertaining to sexually violent predators, required to be sealed under section 632.513, RSMo;

(4) Juvenile division records under section 211.321, RSMo, and applicable rules;

(5) Adoption records under section 453.120, RSMo;

(6) All papers and records, other than the interlocutory or final judgment, in paternity cases under section 210.846, RSMo;

(7) Records of any grand jury proceedings under chapter 540, RSMo;

(8) No true bills;

(9) Psychiatric evaluations under section 552.020.13, RSMo;

(10) Pre-sentence investigations and probation and parole reports under Rule 29.07;

(11) Treatment court division records treated confidentially by statute or federal regulation;

(12) Motions, court orders, and test results for sexually transmitted diseases that are required to be sealed under section 566.135, RSMo;

(13) Jury questionnaires maintained by the court in criminal cases under Rule 27.09;

(14) Search warrant until the warrant is returned or expires;

(15) Filing information sheets; and

(16) Any other record sealed or closed by statute, rule or order of a court of record for good cause shown.

Confidential records for any division of the circuit court, including the municipal division, shall not be offered to the Missouri State Archives, Office of Secretary of State or local archival associations.

8.04 RECORDS RETENTION/ DESTRUCTION SCHEDULE

Retention periods for case types and documents reflected in this schedule represent the minimum amount of time that records must be retained by the courts. Retention periods reflected in the schedule may be met by retaining records in electronic format (if the retention period is five years or less) or paper or archival quality microfilm format.

8.04.6 Municipal or County Ordinance Cases (Includes Certification and Trial de Novo)

Retention periods for case types and documents referenced below apply to all other documents in the case file not purged prior to storage or microfilming.

(A) **All index records for all ordinance cases**: permanent; (Index records that are stored as electronic data in an approved automated case management system, such as JIS, where the information is properly documented and backed-up may be retained permanently in that electronic format.)

(B) **Case resulting in dismissal** (all charges):

(1) **Charging document, amendments to the charging document, docket sheet or backer sheet and disposition**: 3 years after final disposition;

(2) **Case file**: 6 months after final disposition;

(C) **Case resulting in acquittal, conviction, judgment or suspended imposition of sentence**:

(1) **Judgment record, judgment index for all case types within COR 8.04.6(C)**: permanent;

(2) **Stealing and driving while intoxicated, blood alcohol content**:
(a) **Charging document, any amendments to charging document,**

docket sheet or backer sheet and waiver of counsel, if applicable: 50 years after case disposed;

(b) **Remainder of case file**: 12 years after case disposed;

(3) **Other serious ordinance offenses** (e.g. driving while revoked, driving while suspended, leaving the scene of an accident, fleeing or attempting to elude an officer, driver license violations, fraud, burglary, assault and other ordinance offenses involving non-traffic related damage to a person or property): 12 years after case disposed (including docket sheet or backer sheet);

(4) **All other ordinance cases and parking tickets**: 3 years after case disposed (including docket sheet or backer sheet).

(D) **Request or order for destruction of evidence when no case is filed**: 3 years after date of request or order;

(E) **Search warrant** (not in case file): 3 years after date of filing;

Court Operating Rule 14
ASSIGNMENT OF JUDICIAL PERSONNEL/SOLEMNIZING MARRIAGES

Rule 14.01 ASSIGNMENT OF JUDICIAL PERSONNEL

Each presiding circuit judge is hereby authorized to assign any case or any class or classes of cases to any judge or division within the circuit, except that the presiding circuit judge is not authorized by this Court Operating Rule No. 14 to make the following assignments:

(a) Assignment of municipal judge to hear any case other than to initially hear a municipal ordinance violation case of the municipality that makes provision for such municipal judge; and

(b) Assignment of a judge to hear the trial of a felony case when the judge has previously conducted the preliminary hearing in that case unless the defendant has:

(1) Signed a written waiver permitting the same judge to hear both the preliminary hearing and the trial, or

(2) Indicated on the record that the defendant is permitting the same judge

to hear both the preliminary hearing and the trial.

(Adopted Feb. 25, 1992: amended Oct. 31, 2014, eff. January 1, 2015.)

Court Operating Rule 16
CAMERAS IN THE COURTROOM

16.01 DEFINITIONS

a) "Judge" means a municipal division judge, associate circuit judge, or circuit judge presiding in a trial court proceeding, or the presiding judge or justice in an appellate proceeding.

b) "Judicial proceedings" or "proceedings" referred to in this Court Operating Rule No. 16 hearings, or other proceedings in a trial or appellate court for which media coverage is requested, except for those specifically excluded by this Court Operating Rule No. 16.

c) "Media coordinator" as referred to in this Court Operating Rule No. 16 includes the designees of each coordinator.

d) "Media coverage" includes broadcasting, televising, electronic recording, or photographing of judicial proceedings for the purpose of gathering and disseminating news to the public or for the purpose of education.

Court Operating Rule 17
CASE PROCESSING TIME STANDARDS

17.07 These standards do not apply to juvenile, probate or mental health proceedings or to proceedings of the municipal divisions of the circuit court. They also do not apply to less serious general traffic offenses, less serious watercraft offenses, county ordinance violations, or conservation violations.

Court Operating Rule 20
OPEN MEETINGS, OPEN RECORDS, AND COMMUNICATIONS

20.04 The Missouri Courts Web Site

(a) The office of state courts administrator's information technology division shall establish and maintain a Missouri judicial presence on the Internet/World Wide Web by creating and maintaining a secure electronic environment that will permit all appellate courts and circuit courts in the state to develop and post to the Internet court-specific information.

(b) This Court, each district of the court of appeals, and each judicial circuit will have a presence on the Missouri Courts website, the opening page of which will be designed uniformly to designate the respective court as part of Missouri's court system. The Web information about this Court, each district of the court of appeals and each judicial circuit shall include court locations, hours of operation, information about judges and other personnel, telephone numbers and other contact information, court rules, and other pertinent information about the court's operations and services. As a general matter, information posted to the Internet about each court should include at least such information as is readily available when visiting the physical location of the court.
(c) If a judicial circuit chooses to maintain its own Web presence, the Missouri Courts website will link, electronically, to the circuit court's website from that circuit court's designated Web page on the unified Missouri Courts website. If a municipal court division in a judicial circuit maintains a Web presence, that circuit's Web page may contain an electronic link to the municipal court division at the discretion of the circuit's presiding judge.
(d) Content material shall not violate accepted standards of judicial and ethical conduct. Content that represents data extracted, manipulated, computed or otherwise derived from information collected as a result of case management or other automated court processing systems will be reviewed by the state judicial records committee. Reasonable efforts will be made to ensure that up-to-date information is presented on judicial Internet/Web locations. The chief judge of each district of the court of appeals and the presiding judge of each circuit should designate a person to forward necessary information to the webmaster to ensure the timeliness and accuracy of the information contained on the Missouri Courts website.
(e) The Missouri Courts website will contain current and accurate information regarding operations, services, programs and personnel of the office of the clerk of this Court; the office of state courts administrator; the board of law examiners; the office of chief disciplinary counsel; the fine collection center, and other offices and services within the judicial branch as designated by this Court.
(f) The Missouri Courts website will contain current and accurate information about the availability of the commission on retirement, removal and discipline.
(g) The Missouri Courts website will contain this Court's rules, local rules of each district of the court of appeals, and any local court rules developed by each circuit court, as well as selected court forms that the website oversight committee believes may be of use to attorneys or those proceeding pro se. All court forms posted to the Missouri Courts website shall be subject to the approval of the state judicial records committee and the general counsel for this Court.

Court Operating Rule 21
COURT COSTS, FEES, MISCELLANEOUS CHARGES AND SURCHARGES

21.01 AMOUNT OF COSTS, FEES, MISCELLANEOUS CHARGES AND

SURCHARGES

(a) The costs, fees, miscellaneous charges and surcharges authorized on December 31, 2005, shall remain in effect until further order of this Court, except that in lieu of the provisions of section 488.012, RSMo, the costs shall be as follows:

(1) $5 for the filing of a lien, pursuant to section 429.090, RSMo;
(2) $10 for a notice to a judgment creditor of a distributee, pursuant to section 473.618, RSMo;
(3) $3 for receiving and keeping a will, pursuant to section 474.510, RSMo;
(4) $7 for the statewide court automation fund, pursuant to section 488.027, RSMo;
(5) $12 for municipal division costs, $15 for municipal ordinance violations filed before an associate circuit judge, and $30 for applications for a trial de novo of a municipal ordinance violation, pursuant to section 479.260, RSMo;
(6) $10 for small claims division cases, pursuant to section 482.345, RSMo;
(7) $15 for each case disposed as a misdemeanor;
(8) $45 for each case disposed as a felony;
(9) $15 for each associate circuit division case;
(10) $45 for applications for trial de novo from small claims division and associate circuit division and $45 for filing of all other circuit civil cases;
(11) $1.50 for a certificate of naturalization, pursuant to section 483.535, RSMo;
(12) $115 when original letters are applied for in a decedent's estate. When the final inventory value of the real and personal property exceeds $50,000, an additional fee of $50 shall be assessed for each additional $50,000 up to $500,000 of inventory value. Total fees under this section shall not exceed $565.00. If an estate is reopened and the inventory value is revised downward, the fee shall not be refunded. The fee shall provide one certified copy of the letters at no additional cost;
(13) $30 for each additional 12 months a decedent's estate remains open, until the filing of the final settlement;
(14) In proceedings regarding guardianships and conservatorships:

(A) $60 when letters or successor letters are applied for in a guardianship of the person and/or conservatorship of the estate of a minor. The fee shall provide one certified copy of the letters at no additional cost;
(B) $25 for each additional 12 months a conservatorship of a minor remains open, until filing of the final settlement;
(C) $75 when letters or successor letters are applied for in a guardianship of a incapacitated person and/or conservatorship of a disabled person's estate. The fee shall provide one certified copy of the letters at no additional cost;
(D) $30 for each additional 12 months a conservatorship of a disabled person remains open until filing of the final settlement;

(15) $35 for proceedings for issuing orders refusing to grant letters to a creditor, spouse or an unmarried minor child, pursuant to section 473.090, RSMo; including one certified copy of the order;

(16) $35 for proceedings for:

(A) The collection of small estates, pursuant to section 473.097, RSMo;
(B) Involuntary hospitalization, pursuant to chapters 631 and 632, RSMo;
(C) To determine heirships, pursuant to section 473.663, RSMo;
(D) Assessment of estate taxes where no letters are granted, pursuant to chapter 145, RSMo;
(E) The sale of real estate by a nonresident conservator, pursuant to section 475.340, RSMo;
(F) To dispense with administration, pursuant to section 475.320, RSMo; and
(G) To dispense with conservatorship, pursuant to section 475.330, RSMo .

The above fees in this subdivision 21.01(a)(16) shall provide one certified copy of the order at no additional charge;

(17) $35 for proceedings to admit a will to probate, pursuant to section 473.050, RSMo; regardless of whether any other probate proceeding has been filed;
(18) In probate proceedings, for copies not covered above, $1 per copied page and $1.50 per seal in a certified or authenticated copy;
(19) $15 for a court reporter fee in all cases filed in the circuit division, pursuant to section 488.2253, RSMo; and
(20) $15 for a court reporter fee in each probate proceeding when a court reporter is used, pursuant to section 488.2253, RSMo;
(21) $4 for accepting payments of court costs by means other than by cash or negotiable instrument. Any court by local court rule may elect not to accept payments of court costs by means other than by cash or negotiable instrument; and
(22) Reasonable fees for postage and per copied page as provided by local court rule.

(b) The appellate docket fee shall be $70, which includes the $50 clerk fee, pursuant to section 483.500, RSMo, and the $20 basic legal services fund surcharge, pursuant to section 488.031, RSMo.

(c) The court clerk shall collect and disburse the above fees in a manner provided by sections 488.010 to 488.020, RSMo, and Court Operating Rule 21.02; however, none of the above fees shall be collected in any proceeding involving a violation of an ordinance or state law when a criminal proceeding or defendant has been dismissed by the court or when costs are waived or are to be paid by the state, county or municipality. This Court Operating Rule 21.01(c) shall not apply if costs are taxed to the defendant in a criminal proceeding and the state is responsible for payment of costs pursuant to s ection 550.020, RSMo, because the defendant has been declared indigent.

(Adopted Dec. 19, 1997, eff. July 1, 1998. Amended eff. Dec. 23, 1998; July 1, 1999; Dec. 16, 1999, eff. July 1, 2000; Dec. 23, 2003, eff. July 1, 2004; Dec. 15, 2005, eff. July

1, 2006.)

21.02 DISTRIBUTION OF FEES

(a) The fees collected pursuant to Court Operating Rule 21.01(a)(1), (2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (18), except the $12 fee referenced therein, by clerks in all divisions of the circuit courts, other than the municipal divisions, and the Fine Collection Center shall be paid over within 30days of the date that the fee, cost or charge was received, as follows:

(1) 80% of such amounts collected shall be paid to the director of revenue, to be deposited to the general revenue fund;

(2) 20% of such amounts collected shall be paid into the county treasury, or in the case of the city of St. Louis, into the city treasury.

(b) The fees collected pursuant to Court Operating Rule 21.01(a)(19) and (20) by clerks in all divisions of the circuit courts, other than the municipal divisions, shall be paid over within 30 days of the date that the fee, cost, or charge was received to the director of revenue, to be deposited to the general revenue fund.

(c) The fees collected pursuant to Court Operating Rule 21.01(a)(4) by clerks and the Fine Collection Center shall be paid to the director of revenue to be deposited in the court automation fund pursuant to section 488.027, RSMo.

(d) The fees collected pursuant to Court Operating Rule 21.01(a)(21) by clerks and the Fine Collection Center shall be retained by the court or the Fine Collection Center to offset related costs.

(e) The fees collected pursuant to Court Operating Rule 21.01(a)(22) by clerks shall be paid into the county treasury, or in the case of the city of St. Louis, into the city treasury or to the appropriate entity.

(f) The $12 fee collected by clerks pursuant to Court Operating Rule 21.01(a)(5) shall be paid into the municipality treasury.

(g) The appellate fees collected pursuant to Court Operating Rule 21.01(b) by clerks in all division of the circuit courts, other than the municipal divisions, shall be paid over within 30 days of the date that the fee was received. The clerk fee shall be paid to the director of revenue, to be deposited to the general revenue fund, and the basic civil legal services fund surcharge shall be paid to the director of revenue to be deposited to the basic civil legal services fund.

(Adopted Dec. 23, 2003, eff. July 1, 2004. Amended Dec. 15, 2005, eff. July 1, 2006.)

21.12 FINE COLLECTION CENTER

All divisions of the circuit courts, except municipal divisions, shall participate in the fine collection

center.

(Adopted April 14, 2011, eff. Jan. 1, 2012.)

21.13 TIME PAYMENT FEE

All divisions of the circuit courts, except municipal divisions, shall assess a $25 time payment fee on all cases not paid in full within 30 days of disposition.

(Adopted April 14, 2011, eff. Jan. 1, 2012.)