

NEW HAMPSHIRE SUPREME COURT ADVISORY COMMITTEE ON RULES

PUBLIC HEARING NOTICE

The New Hampshire Supreme Court Advisory Committee on Rules will hold a PUBLIC HEARING at 12:30 p.m. on Friday, December 7, 2018, at the Supreme Court Building on Charles Doe Drive in Concord, to receive the views of any member of the public, the bench, or the bar on court rules changes which the Committee is considering for possible recommendation to the Supreme Court.

Comments on any of the court rules proposals which the Committee is considering for possible recommendation to the Supreme Court may be submitted in writing to the secretary of the Committee at any time on or before December 6, 2018 or may be submitted at the hearing on December 7, 2018. Comments may be e-mailed to the Committee on or before December 6, 2018 at:

rulescomment@courts.state.nh.us

Comments may also be mailed or delivered to the Committee at the following address:

N.H. Supreme Court
Advisory Committee on Rules
1 Charles Doe Drive
Concord, NH 03301

Any suggestions for rules changes other than those set forth below may be submitted in writing to the secretary of the Committee for consideration by the Committee in the future.

Copies of the specific changes being considered by the Committee are available on request to the secretary of the Committee at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301

(Telephone 271-2646). In addition, the changes being considered are available on the Internet (in the Appendix to the Public Hearing Notice) at:

<http://www.courts.state.nh.us/committees/adviscommrules/notices.htm>

The changes being considered concern the following rules:

I. 2018-004. Supreme Court Rule 36. Appearances in Courts by Eligible Law Students and Graduates.

(This proposal would amend Supreme Court Rule 36 to allow students who have completed a 9 hour training program for the DOVE project to start supervised practice right away, rather than wait until the end of the spring semester of their second year.)

1. Amend Supreme Court Rule 36, as set forth in Appendix A.

II. 2017-016. Supreme Court Rule 40. Procedural Rules of Committee on Judicial Conduct.

(This proposal would amend the definition of “judge” in Supreme Court Rule 40 to make clear that a member of court staff is included in the definition of “judge” only when he or she performs an adjudicatory function.)

1. Amend Supreme Court Rule 40(2)(“Definitions”), as set forth in Appendix B.

III. 2018-006. Type-Volume Limitations for Supreme Court Briefs.

(This proposal would amend Supreme Court Rules to change the type-volume limitations for Supreme Court briefs.)

1. Amend Supreme Court Rule 12-D, Summary of Procedures on Appeal, as set forth in Appendix C.
2. Amend Supreme Court Rule 16, Briefs, as set forth in Appendix D.

IV. 2018-008. Rule of Professional Conduct 6.5 Nonprofit and Court-Annexed Legal Service Programs.

(The Court adopted a comment to follow Rule of Professional Conduct 6.5 by Order dated July 13, 2018. The comment was adopted on a temporary basis and referred to the Advisory Committee on Rules for its recommendation as to whether it should be adopted on a permanent basis. The Committee requests comment about whether the change should be adopted on permanent basis.)

1. Adopt on a permanent basis the comment following Rule of Professional Conduct 6.5, as set forth in Appendix E.

New Hampshire Supreme Court
Advisory Committee on Rules
By: Patrick E. Donovan, Chairperson
and Carolyn A. Koegler, Secretary

October 25, 2018

APPENDIX A

Amend Supreme Court Rule 36, as follows (new material is in **bold and brackets**]; deleted material is in ~~strikethrough~~ format):

Rule 36. Appearances in Courts By Eligible Law Students and Graduates.

(1) Notwithstanding the provisions of any superior court rule concerning persons who are not lawyers, of any superior court rule and district court rule concerning lawyers who are not members of the bar of this State, and of any other such court rules, an eligible law student or law graduate acting under a supervising attorney may appear in any court in this State as herein provided, in behalf of any indigent person, the State of New Hampshire, a State agency, or a State subdivision.

(2) The supervising attorney shall be a member of the bar of this State and, with respect to the law student or graduate's proposed appearances in any court, shall file with the clerk of this court the attorney's written consent to:

(a) supervise the student or graduate;

(b) assume personal professional responsibility for the student's or graduate's work and consider purchasing professional liability insurance coverage to include such law student or graduate;

(c) assist the student or graduate to the extent necessary;

(d) appear with the student or graduate in courts in this State when, in the supervising attorney's judgment, the nature of the case requires the supervising attorney's presence; and

(e) participate with the student or graduate in all settlement or plea negotiations and remain available at all times for consultation with opposing counsel without the participation of the student or graduate.

The supervising attorney shall waive the right to the confidentiality of proceedings resulting from complaints to the Committee on Professional Conduct, for the limited purpose of permitting disclosure of such proceedings by said committee to this court in connection with the court's review of a filing under this rule.

The presence of the supervising attorney in the superior court shall be required in all contested civil cases and in all criminal cases, and in district and municipal courts at probable cause hearings. Practicing members in good

standing of the bar of another State for at least two years may on application to this court be exempt from the provisions of this rule relating to appearances in superior court and at probable cause hearings in district and municipal courts, provided that they prepare to take and do take the next bar examination in this State for which they are eligible or, having taken that examination, they are awaiting publication of the results of, or admission to the bar after passing, that examination. The presence of the supervising attorney shall be required in all cases in this court provided, however, that a student or graduate may appear in this court only in cases heard under Rule 12-D and with prior approval of this court.

The attorney shall file his written consent immediately upon his consenting to supervise a law student or graduate. Following such initial written consent, in every instance in which an attorney consents to continue his supervision of the law students and graduates under this rule, the attorney shall annually refile his written consent with the clerk of the supreme court in the month of October. The attorney shall file a withdrawal of his written consent immediately upon the termination of his supervision of any such student or graduate.

(3) In order to be eligible to appear:

(a) the student shall

(1) be enrolled at least 75% of full-time in a law school approved by the American Bar Association. The student shall be deemed to continue to meet this requirement as long as, following graduation, he or she is preparing to take and does take the next State bar examination of the State of his or her choice for which he or she is eligible or, having taken that examination, the student is awaiting publication of the results of, or admission to the bar after passing, that examination;

(2) **[be of good moral character and fitness and shall]** have completed legal studies amounting to at least four full-time semesters, or the equivalent, or have completed two full-time semesters and be enrolled in a law school clinical course with a classroom component geared to training the students for the work, ~~and be of good moral character and fitness~~**[. Second year Daniel Webster Scholar students enrolled at the University of New Hampshire Law School who have completed the nine hour DOVE project training program shall be deemed to have met the requirement that students “be enrolled in a law school clinical course with a classroom component geared to training the students for the work.”]**

(3) be certified, by either the dean or a faculty member of his or her law school designated by the dean, as qualified to provide the legal representation permitted by this rule. This certification may be withdrawn by

the dean or designated faculty member by mailing a notice of withdrawal to the clerk of this court at any time without notice or hearing and without any showing of cause. The loss of certification by action of this court shall not be considered a reflection on the character or ability of the student. The dean or a faculty member designated by the dean may recertify such a student for appearances under this rule;

(b) the law graduate shall:

(1) have graduated from a law school approved by the American Bar Association and be of good moral character and fitness. The graduate shall be deemed to continue to meet this requirement as long as he or she is preparing to take and does take the next bar examination in this State for which he or she is eligible or, having taken that examination, he or she is awaiting publication of the results of, or admission to the bar after passing, that examination.

(c) the law student or law graduate shall:

(1) neither ask for nor receive any compensation or remuneration of any kind for his or her services from the party on whose behalf he or she renders services, but this shall not prevent an attorney, an approved legal aid society, federally funded legal services program, law school, public defender program, the State, a State agency, or a subdivision of the State, from paying compensation to the eligible law student or graduate nor shall it prevent any agency from making proper charges for its services;

(2) certify in writing that he or she is familiar, and will comply, with the Rules of Professional Conduct approved by this court;

(3) certify in writing that he or she is familiar with the rules of this court and of other courts in this State, and any other rules relevant to the cases in which he or she is appearing and that he or she will agree to be bound by the Rules of Professional Conduct, and by the Guidelines for the Utilization by Lawyers of the Services of Legal Assistants Under the New Hampshire Rules of Professional Conduct not inconsistent with this rule;

(4) certify in writing that he or she acknowledges that his or her appearance under this rule may be suspended for cause on order of any justice of any court of this State, subject to reinstatement shown to the supreme court;

(5) file a sworn affidavit certifying that except as otherwise stated he or she has not ever been a party to any criminal proceedings.

(4) A law student or graduate seeking to appear pursuant to this rule shall complete the Form Designating Compliance with Student/Graduate Practice Rule, approved by the court. Upon filing this form with the clerk of this court, an eligible law student or graduate supervised in accordance with this rule may appear before any court as herein provided with respect to any case for which the student or graduate has met the requirements of this rule; provided that the requirements of this rule shall not be deemed to have been met by any person who has been a party to any criminal proceeding until the court shall have notified such person in writing that he or she has met the requirements of the rule.

(5) The clerk of the supreme court shall maintain a record of the name of each law student and law graduate and the name of the law student's and law graduate's supervising attorney who comply with the provisions of this rule.

(6) This rule shall not apply to any person who has taken and failed to pass the New Hampshire bar examination or the latest bar examination in any other state.

APPENDIX B

Amend Supreme Court Rule 40(2)(“Definitions”), as follows (new material is in **[bold and brackets]**; deleted material is in ~~striketrough~~ format):

Judge – this term includes **[the following members of the State of New Hampshire Judicial Branch]**: (1) a full-time or part time judge of any court or division of ~~the State of New Hampshire Judicial Branch~~; (2) a full-time or part-time marital master; (3) a referee or other master; **[and]** (4)**[, when performing an adjudicatory function,]** a court stenographer, monitor or reporter, a clerk of court or deputy clerk, including a register of probate or deputy register, and anyone performing the duties of a clerk or register **[on an interim basis]**. Not everyone who is a “judge” as defined herein is bound by every cannon of the Code of Judicial Conduct – the Code of Judicial Conduct applies to a judge to the extent provided in Supreme Court Rule 38.

APPENDIX C

Amend Supreme Court Rule 12-D as follows (new material is in **bold and brackets**]; deleted material is in ~~strikethrough~~ format):

Rule 12-D. Summary Procedures on Appeal.

(1) Selection of Cases.

(a) By order of the court, consistent with the criteria set out at paragraph (5) below, any case may be set for oral argument before a panel of three justices (3JX panel).

(b) Any party may request or consent that a case be set for oral argument before a 3JX panel. The court will consider and act upon such request, based upon criteria set out at paragraph (5) below.

(c) The court may direct that the matter be submitted on briefs, without oral argument, to a 3JX panel. See Rule 18(1).

(d) Except as noted in this rule, the procedure for cases assigned to a 3JX panel shall be the same as otherwise provided in these rules. Any motions made in a case assigned to a 3JX panel shall be acted upon by the panel. The panel may, in its discretion, refer any such motion to the full court for resolution.

(2) Disposition after Argument Before Three Justices; Additional Briefing, etc.

(a) Any case which has been heard by a 3JX panel shall be decided by unanimous order of the three justices. If the panel cannot reach a unanimous decision, it shall direct that the case be decided by the full court. The panel may order that a case be decided by the full court in such other circumstances as it deems appropriate. The panel may, prior to determining that a unanimous decision cannot be reached, require additional briefing. If decision by the full court is ordered, the court may issue an additional order setting forth matters to be reargued or rebriefed.

(b) Unless the court orders otherwise, whenever a 3JX panel directs after oral argument that a case be decided by the full court, no further oral argument shall be held and the members of the court who were not on the 3JX panel shall listen to the recording of the 3JX oral argument before deciding the case.

(3) Non-precedential Status of Orders. An order issued by a 3JX panel shall have no precedential value, but it may, nevertheless, be cited or referenced in pleadings or rulings in any court in this state, so long as it is identified as a non-precedential order. Such non-precedential orders may be cited and shall be controlling with respect to issues of claim preclusion, law of the case and similar issues involving the parties or facts of the case in which the order was issued. All citations to non-precedential orders shall identify the court, docket number and date.

(4) [Repealed.]

(5) Criteria for Selection of Cases for 3JX Panel. Cases suitable for oral argument before a 3JX panel include, but are not limited to:

(a) appeals involving claims of error in the application of settled law;

(b) appeals claiming an unsustainable exercise of discretion where the law governing that discretion is settled;

(c) appeals claiming insufficient evidence or a result against the weight of the evidence.

(6) Briefing, Argument, etc.

(a) In all cases selected for oral argument before a 3JX panel, briefs shall be limited to ~~9,500~~ **[11,250]** words, exclusive of the table of contents, tables of citations and any addendum containing pertinent texts of constitutions, statutes, rules, regulations and other such matters. Reply briefs shall be limited to 3,000 words.

(b) Oral argument will be limited to five minutes per side. In the event of multiple parties on the same side, the court may determine, either upon its own motion or upon motion of a party, an appropriate amount of time for oral argument.

(7) Motion for Rehearing or Reconsideration. Motions for rehearing or reconsideration of any order assigning a case to a three-justice panel or of any order issued by a three-justice panel shall be governed by Rule [22](#).

APPENDIX D

Amend Supreme Court Rule 16 as follows (new material is in **bold and brackets**]; deleted material is in ~~strikethrough~~ format):

Rule 16. Briefs.

(1) Briefs may be prepared using a printing, duplicating or copying process capable of producing a clear letter quality black image on white paper, but shall not include ordinary carbon copies. If briefs timely filed do not conform to this rule or are not clearly legible, the clerk of the supreme court may require that new copies be substituted, but the filing shall not thereby be deemed untimely.

Each brief shall be in pamphlet form upon good quality, nonclinging paper 8 ½ by 11 inches in size, with front and back covers of durable quality. Each brief shall have a minimum margin of one and one-half (1½) inch on all sides and shall be firmly bound at the left margin. Any metal or plastic spines, fasteners or staples shall be flush with the covers and shall be covered by tape. The covers shall be flush with the pages of the case. *See also* Rule 26(5).

If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appealing party should be blue; that of the opposing party, red; that of an intervenor or amicus curiae, green; and that of any reply brief, including the answering brief in accordance with Rule 16(8), gray. The cover of the appendix, if separately printed, should be white.

The court will not accept any other method of binding unless prior approval has been obtained from the clerk of the supreme court.

(2) The front covers of the briefs and of appendices, if the appendices are separately produced, shall contain: (a) the name of this court and the docket number of the case; (b) the title of the case; (c) the nature of the proceeding in this court, *e.g.*, appeal by petition pursuant to RSA 541: 6, and the name of the court or agency below; (d) the title of the document, *e.g.*, brief for plaintiff; (e) the names, addresses and New Hampshire Bar identification numbers of counsel representing the party on whose behalf the document is filed; and (f) the name of counsel who is to argue the case. *See form in appendix.*

(3) So far as possible, the brief of the moving party on the merits shall contain in the order here indicated:

(a) A table of contents, with page references, and a table of cases listed alphabetically, a table of statutes and other authorities, with references to the pages of the briefs where they are cited.

(b) The questions presented for review, expressed in terms and circumstances of the case but without unnecessary detail. While the statement of a question need not be worded exactly as it was in the appeal document, the question presented shall be the same as the question previously set forth in the appeal document. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. The moving party may argue in his brief any question of law not listed in his appeal document, but only if the supreme court has granted a motion to add such question, and he has presented a record that is sufficient for the supreme court to decide the questions presented. Motions to add a question may be filed only by a party who filed an appeal document (including a party who filed a cross-appeal), and shall be filed at least 20 days prior to the due date of the moving party's brief.

After each statement of a question presented, counsel shall make specific reference to the volume and page of the transcript where the issue was raised and where an objection was made, or to the pleading which raised the issue. Failure to comply with this requirement shall be cause for the court to disregard or strike the brief in whole or in part, and opposing counsel may so move within ten days of the filing of a brief not in compliance with this rule.

(c) The constitutional provisions, statutes, ordinances, rules, or regulations involved in the case, setting them out verbatim, and giving their citation. If the provisions involved are lengthy, their citation alone will suffice at that point, and their pertinent text shall be set forth in an appendix.

(d) A concise statement of the case and a statement of facts material to the consideration of the questions presented, with appropriate references to the appendix or to the record.

(e) A summary of argument, suitably paragraphed, which should be a succinct, but accurate and clear, condensation of the argument made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged.

(f) The argument, exhibiting clearly the points of fact and of law being presented, citing the authorities relied upon.

(g) A conclusion, specifying the relief to which the party believes himself entitled.

(h) A statement that the party waives oral argument or that the party requests oral argument. A party requesting oral argument may designate

whether the party requests oral argument before a 3JX panel or the full court, and may set forth reasons why the party believes oral argument is necessary or will be helpful to the court in deciding the case. If a party requests oral argument before the full court, and if the party believes that more than 15 minutes to a side will be necessary for oral argument, the party may set forth why the party believes that good cause exists for granting additional time. The party shall designate the lawyer to be heard if there are two or more lawyers on the party's side.

(i) A copy of the decision(s) below that are being appealed or reviewed. If the appealed decision is in writing, a copy of that decision shall be included with the brief, and shall not be included in a separate appendix. The appealing party shall, immediately before the signature line on the brief, certify either that the appealed decision is in writing and is appended to the brief, or that the appealed decision was not in writing and therefore is not appended to the brief. Any brief not conforming with this rule may be rejected.

(4)(a) The brief of the opposing party shall conform to the foregoing requirements, except that no statement of the case need be made beyond what may be deemed necessary in correcting any inaccuracy or omission in the statement of the other side, and except that subsections (b), (c), and (h) of subsection (3) need not be included unless the opposing party is dissatisfied with their presentation by the other side.

(b) Instead of a brief, the opposing party in a mandatory appeal may file a memorandum of law not to exceed 4,000 words in length. A memorandum of law need not comply with the requirements for a brief set forth in this rule, including the requirements that briefs be bound in pamphlet form and have covers. A memorandum of law, however, shall contain: (i) the argument, exhibiting clearly the points of fact and of law being presented, citing the authorities relied upon; and (ii) a conclusion, specifying the relief to which the party believes himself entitled. A party who files a memorandum of law shall be deemed to have consented to the waiver of oral argument.

(5) Reply briefs shall conform to such parts of this rule as are applicable to the briefs of an opposing party, but need not contain a summary of argument, regardless of their length, if appropriately divided by topical headings.

(6) Briefs and memoranda of law must be compact, logically arranged with proper headings, concise and free from burdensome, irrelevant, and immaterial matter. Briefs and memoranda of law not complying with this section may be disregarded and stricken by the supreme court.

(7) Unless specially ordered otherwise, the original and 8 copies of the opening brief shall be filed with the clerk of the supreme court, in addition, 2 copies with counsel for each party separately represented, 2 copies with each

self-represented party, and like distribution shall be made of the opposing brief, opposing memorandum of law, or any other brief, all within the times specified in the applicable scheduling order.

The party filing the opening brief may similarly file, and make like distribution of, a reply brief, which shall be filed by the earlier of 20 days following the submission of the opposing brief or opposing memorandum of law, or 10 days before the date of oral argument. A reply brief may be filed after the expiration of the applicable time period only by leave of court. Responses to a reply brief shall not ordinarily be allowed. No response to a reply brief may be filed except by permission of the court received in advance.

Whenever a party desires to present late authorities, newly enacted legislation, or other intervening matters that were not available in time to have been included in his brief, he may similarly file, and make like distribution of, such new matters up to and including the day of oral argument, or by leave of the supreme court thereafter.

The court shall not consider any brief or memorandum of law after a case has been argued or submitted, unless the court has granted to the party offering to file the brief or memorandum of law special leave to do so in advance.

(8) If a cross-appeal is filed, the clerk shall determine which party shall be deemed the moving party for the purposes of this rule, unless the parties agree and so notify the court. The brief of the opposing party shall contain the issues and argument involved in his appeal as well as the answer to the brief of the moving party. The moving party may file an answering brief within the time specified in the scheduling order.

(9) All references in a brief or memorandum of law to the appendix or to the record must be accompanied by the appropriate page number. *See* Rule 17.

(10) The party filing a brief or memorandum of law shall conclude the pleading with a certification that the party has hand-delivered or has sent by first class mail two copies of the pleading to the other counsel in the case.

The name of the party filing the brief or memorandum of law and the name of the lawyer representing the party shall appear in type at the conclusion of the pleading, and the lawyer shall sign the pleading. Names of persons not members of the bar or not parties shall not appear on the notice of appeal, the brief, the memorandum of law, or in the appendix unless they have complied with Rule 33 and received prior written approval of the court. *See* Rule 33(2).

If an attorney provided limited representation to an otherwise unrepresented party by drafting a brief or memorandum of law to be filed by such party in a

proceeding in which the attorney is not entering any appearance or otherwise appearing in the case in the supreme court, the attorney is not required to disclose the attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, must conspicuously contain the statement **"This pleading was prepared with the assistance of a New Hampshire attorney."** The unrepresented party must comply with this required disclosure.

(11) Each brief and memorandum of law shall consist of standard sized typewriter characters or size 13 font produced on one side of each leaf only. The lines of text shall be spaced at a setting of 1.5. The text shall be left-aligned only. The pages of the brief shall be sequentially numbered, beginning with the cover page as page 1 and using only Arabic numerals for page numbers (*e.g.* 1, 2, 3), including for the table of contents and table of authorities. The page number may be suppressed and need not appear on the cover page.

Except by permission of the court received in advance, no reply brief (or response thereto) shall exceed 3,000 words, and, except in a case with a cross-appeal, no other brief shall exceed ~~9,500~~ **[11,250]** words exclusive of pages containing the table of contents, tables of citations, and any addendum containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters. If a cross-appeal is filed, the opening brief and answering brief of the moving party shall not exceed ~~9,500~~ **[11,250]** words, and the opposing brief of the cross-appellant shall not exceed 14,000 words, exclusive of pages containing the table of contents, tables of citations, and any addendum containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters. The cross-appellant may file a reply brief, which shall not exceed 3,000 words.

(12) Failure of the appealing party to file a brief shall constitute a waiver of the appeal and the case shall be dismissed.

APPENDIX E

Adopt the following New Hampshire Supreme Court Comment to Rule of Professional Conduct 6.5 on a permanent basis (the comment adopted by Supreme Court Order dated July 13, 2018 is in **brackets**):

Rule 6.5. Nonprofit and Court-Annexed Limited Legal Service Programs

(a) A lawyer who, under the auspices of a program sponsored by the New Hampshire Bar Association, a nonprofit organization or court, provides one-time consultation with a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

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

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

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

(c) Rules 1.6 and 1.9(c) are applicable to a representation governed by this Rule.

[New Hampshire Supreme Court Comment

For purposes of participation by New Hampshire lawyers in the ABA Free Legal Answers website (to increase access to advice and information to clients who cannot afford an attorney), “one time consultation with a client” will include reasonably contemporaneous communication with a client, such as through an email exchange, online chat session, or other online messaging service, directly related to the matter initially discussed.]

Ethics Committee Comment

1. New Hampshire’s version differs from the Model Rule as follows:

a. Application of this Rule in (a) is limited to a “one time consultation with a client” instead of the ABA’s version “short-term limited legal services to a client”.

b. Section (c) is added.

2. The change in (a) is intended to give the attorney some clarity as to the scope of this Rule. This Rule relaxes certain of the normal conflicts limitations to allow this important pro bono service; this Rule applies only under circumstances where it is not reasonably possible for the attorney to otherwise comply with normal conflict of interest records checks procedures. Therefore, the situation where an attorney provides repeated services for the same client, and not a “one time consultation”, would not permit any deviation from the normal conflicts rules.

3. The addition of Section (c) is intended simply to emphasize the attorney's continuing responsibility to maintain confidences under Rule 1.6, and the attorney's duties to a former client under Rule 1.9(c). This inclusion raises this language, already contained in ABA Comment [2], to Rule status.

4. The value of the services rendered to the public in this pro bono context is important enough to justify carving out a special exception to the normal conflicts rules applicable in general client representation. In this special context, not even the protective “screening” rules, such as those adopted in 1.11(b), were employed.

5. Should a lawyer participating in a one-time consultation under this Rule later discover that the lawyer's firm was representing or later undertook the representation of an adverse client, the prior participation of the attorney will not preclude the lawyer's firm from continuing or undertaking representation of such adverse client. But the participating lawyer will be disqualified and must be screened from any involvement with the firm's adverse client. See ABA Comment [4].

2004 ABA Model Rule Comment
RULE 6.5 NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the

client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. *See, e.g.*, Rules 1.7, 1.9 and 1.10.

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

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

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

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