

## ***APPENDIX TO COURT'S ORDER***

### **1. *AMENDING RULES OF PROFESSIONAL CONDUCT - April 29, 2003***

The amendments to the specified Rules of Professional Conduct and to the specified Comments to individual RPCs are as follows:

1. **RPC 1.2, Comment [7]:** Comment [7] to RPC 1.2 is hereby amended to read in its entirety as follows:

#### **Agreements Limiting the Scope of the Representation**

[7] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such agreements limiting the scope of a representation may preclude the lawyer from taking actions that the client thinks are too costly or may permit the lawyer to refrain from taking action that the lawyer regards as repugnant or imprudent.

2. **RPC 1.5, Comment [4]:** Comment [4] to RPC 1.5 is hereby amended to read in its entirety as follows:

[4] In some circumstances, other law may regulate the fees and expenses charged by lawyers. For example, Tennessee law regulates contingent fees in medical malpractice cases. *See* Tenn. Code Ann. § 29-26-120 (1980). In these circumstances, charging unlawful fees or expenses may be considered unreasonable under section (a) of this Rule and may violate Rule 8.4 or other rules. *See* RPC 8.4(d) (prohibiting conduct prejudicial to the administration of justice).

3. **RPC 1.6(a):** RPC 1.6(a) is hereby amended to read in its entirety as follows:

(a) Except as provided below, a lawyer shall not reveal information relating to the representation of a client unless the client consents after consultation, except that the lawyer may make such disclosures as are impliedly authorized by the client in order for the lawyer to carry out the representation.

4. **RPC 1.14, Comment [6]:** Comment [6] to Rule 1.14 is hereby amended to delete the word "Emergency" from the title of the Comment; as amended, Comment [6] shall read in its entirety as follows:

#### **Legal Assistance**

[6] If the health, safety, or financial interest of a person under a disability is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or is unable to express or make considered judgments about the matter, when the disabled person or another acting in good faith on the person's behalf has consulted the lawyer. Even in such a situation, however, the lawyer should

not act unless the lawyer reasonably believes that the person has no other lawyer, agent, or other representative available. The lawyer should take legal action on behalf of the disabled person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

**5. RPC 4.2, Comment [7]:** *Comment [7] to Rule 4.2 is hereby amended to read in its entirety as follows:*

[7] By virtue of its exemption of communications authorized by law, this Rule permits a prosecutor or a government lawyer engaged in a criminal or civil law enforcement investigation to communicate with or direct investigative agents to communicate with a represented person prior to the represented person being arrested, indicted, charged, or named as a defendant in a criminal or civil law enforcement proceeding against the represented person. A civil law enforcement investigation is one conducted under the government's police or regulatory power to enforce the law. Once a represented person has been arrested, indicted, charged, or named as a defendant in a criminal or civil law enforcement proceeding, however, prosecutors and government lawyers must comply with this Rule. A represented person's waiver of the constitutional right to counsel does not exempt the prosecutor from the duty to comply with this Rule.

**6. RPC 4.4, Comment:** The Comment to RPC 4.4 is hereby amended to read in its entirety as follows:

Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship. For example, a lawyer may not secretly record a conversation or the activities of another person if doing so would violate state or federal law specifically prohibiting such recording. Otherwise, this Rule does not prohibit secret recording so long as the lawyer has a substantial purpose other than to embarrass or burden the persons being recorded. It would be a violation of Rule 4.1 or Rule 8.4(c), however, if the lawyer stated falsely or affirmatively misled another to believe that a conversation or an activity was not being recorded. By itself, however, secret taping does not violate either Rule 8.4(c) (prohibition against dishonest or deceitful conduct) or Rule 8.4(d) (prohibition against conduct prejudicial to the administration of justice.)

**7. RPC 7.4:** RPC 7.4 ("COMMUNICATION OF FIELDS OF PRACTICE") is amended to read in its entirety as follows:

Subject to the requirements of Rules 7.1, 7.2, and 7.3,

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) Except as permitted by paragraphs (c) and (d), a lawyer shall not state that the lawyer is a specialist, specializes, or is certified or recognized as a specialist in a particular field of law.

(c) A lawyer admitted to engage in patent practice before the United States Patent and Trademark

Office may use the designation “Patent Attorney” or a substantially similar designation.

(d) A lawyer who has been certified as a specialist in a field of law by the Tennessee Commission on Continuing Legal Education and Specialization may state that the lawyer “is certified as a specialist in [field of law] by the Tennessee Commission on C.L.E. and Specialization.” A lawyer so certified may also state that the lawyer is certified as a specialist in that field of law by an organization recognized or accredited by the Tennessee Commission on Continuing Legal Education and Specialization as complying with its requirements, provided the statement is made in the following format: “[Lawyer] is certified as a specialist in [field of law] by [organization].”

**8. RPC 7.4, Comment [4]:** The current Comment [4] to RPC 7.4 is hereby deleted in its entirety; as amended, the Comments to RPC 7.4 shall read in their entirety as follows:

### COMMENTS

[1] This Rule permits a lawyer to indicate areas of practice in communications about the lawyer’s services. If a lawyer practices only in certain fields or will not accept matters in a specified field or fields, the lawyer is permitted to so indicate.

[2] However, a lawyer may not communicate that the lawyer is a “specialist,” practices a “specialty,” “specializes in” a particular field, or that the lawyer has been recognized or certified as a specialist in a particular field of law, except as provided by this Rule. Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office, as reflected in paragraph (c).

[3] Paragraph (d) permits a lawyer to communicate that he or she is a specialist or has been certified or recognized as a specialist when the lawyer has been so certified or recognized by the Tennessee Commission on Continuing Legal Education and Specialization. The certification procedures are designed to require that the lawyer demonstrate higher degree of specialized ability and experience than is suggested by general licensure to practice law. This paragraph also permits the lawyer to state that he or she is certified by other professional organizations, provided that such organizations have been accredited by the Commission as complying with its requirements to issue such certification.

**9. RPC 7.6(a):** RPC 7.6(a) is hereby amended to read in its entirety as follows:

(a) An intermediary organization is a lawyer advertising cooperative, lawyer referral service, prepaid legal insurance provider, or a similar organization the business or activities of which include the referral of its customers, members, or beneficiaries to lawyers or the payment for or provision of legal services to the organization’s customers, members, or beneficiaries in matters for which the organization does not bear ultimate responsibility.

**10. RPC 8.4, Comment [5]:** The current version of Comment [5] to RPC 8.4 is hereby deleted in its entirety and replaced by the following new Comment [5]:

[5] The lawful secret or surreptitious recording of a conversation or the actions of another for the purpose of obtaining or preserving evidence does not, by itself, constitute conduct involving deceit or dishonesty. *See* Rule 4.4.

***11. Amendment of Transitional Rule (b) to include reference to Rule 1.11(a): Subparagraph (b) of the “Transitional Rules Governing the Implementation of the Tennessee Rules of Professional Conduct” (set out in Tenn. Sup. Ct. R. 8 immediately following the Rules of Professional Conduct) is hereby amended to read in its entirety as follows:***

(b) The provisions requiring a writing contained in Rules 1.7, 1.8(g), 1.9, 1.11(a), and 1.12 shall apply only to conflicts of interest that arise on or after March 1, 2003;[.]