

New Conflict of Interest Rules for Non-Profit Legal Services Providers

- R.6** (a) A lawyer engaged in the provision of short-term legal services through a non-profit legal services provider, without any expectation that the lawyer will provide continuing representation in the matter:
- (i) May provide legal services, unless the lawyer is aware that the clients' interests are directly adverse to the immediate interests of another current client of the individual lawyer, the lawyer's firm or the non-profit legal services provider; and
 - (ii) May provide legal services, unless the lawyer is aware that the lawyer or the lawyer's firm may be disqualified from acting due to the possession of confidential information which could be used to the disadvantage of a current or former client of the lawyer, the lawyer's firm, or the non-profit legal services provider.
- (b) In the event a lawyer provides short-term legal services through a non-profit legal services provider, other lawyers within the lawyer's firm or providing services through the non-profit legal services provider may undertake or continue the representation of other clients with interests adverse to the client being represented for a short-term or limited purpose, provided that adequate screening measures are taken to prevent disclosure or involvement by the lawyer providing short-term legal services.

C.6 As noted in Commentary G.1, "firm" and "firm member" are defined broadly for the purposes of this Code and, in particular, this chapter (see *Interpretation*).

Volunteer *pro bono* and non-profit legal services organizations, including Legal Aid Alberta, have established programs through which lawyers provide short-term legal services. "Short-term legal services" means advice or representation of a summary nature provided by a lawyer to a client under the auspices of a non-profit organization with the expectation by the lawyer and the client that the lawyer will not provide continuing representation in the matter. It is in the interests of the public, the legal profession and the judicial system that lawyers are available to individuals through these organizations. While a lawyer-client relationship is established, there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs or services are normally offered in circumstances which make it difficult to systematically screen for conflicts of interest, despite the best efforts and existing practices of non-profit legal services organizations. Further, the limited nature of the legal services being provided significantly reduces the risk of conflicts of interest with other matters being handled by the consulting lawyer's firm. Accordingly, Rule #6 requires compliance with the usual rules which govern conflicts of interest only if the consulting lawyer has actual knowledge that he or she is disqualified as the result of a relationship between an existing or former client and the consulting lawyer, the lawyer's firm or the non-profit legal services provider. In most cases, it is expected that the existence of a potential conflict will be identified through the conflict screening processes employed by non-profit legal services organizations or by the individual lawyer who may identify a conflict before or at the time of meeting with the client receiving the short-term legal services.

The personal disqualification of a lawyer providing legal services in a *pro bono* or non-profit program will not be imputed to other participating lawyers. If, however, the lawyer intends to represent the client on an ongoing basis after commencing the short-term limited retainer, the other Rules in this Chapter will apply.

The confidentiality of information obtained by a lawyer providing short-term legal services pursuant to this Rule must be maintained. If not, a lawyer's partners and associates in his or her firm, or other lawyers providing services under the auspices of the non-profit legal services provider, will not be able to act for other clients where there is a conflict with the client who has obtained, or is obtaining, short-term legal

services. Without restricting the scope of screening measures which may appropriately be undertaken in a particular set of circumstances, the following are some examples of proper measures which may be taken to ensure confidentiality. The lawyer who provided the short-term legal services shall have no involvement in the representation of another client whose interests conflict with those of the client who received short-term legal services from the lawyer, and shall not have any discussions with the lawyers representing the other client. Discussions involving the relevant matter should take place only with the limited group of firm members working on the other client's matter. The relevant files may be specifically identified and physically segregated and access to them limited only to those working on the file or who require access for specifically identified or approved reasons. It would also be advisable to issue a written policy to all lawyers and support staff, explaining the screening measures which have been undertaken.

No consent is required from either the client who received short-term legal services, or the client whose interests may conflict with the client receiving short-term legal services, to allow a lawyer, the lawyer's firm or a non-profit legal services provider to act for any client whose interests conflict with those of the client who has received short-term legal services, provided there has been compliance with Chapter 6, Rule 6(b). Rule 6(a) does not contemplate that a conflict, of which a lawyer is or becomes aware when engaged in the provision of short-term legal services through a non-profit legal services provider, may be waived by consent.

When offering short-term limited legal services, lawyers should also assess whether the client may require additional legal services, beyond a limited consultation. In the event that such additional services are required or advisable, the lawyer should explain the limited nature of the consultation and encourage the client to seek further legal assistance.