

Proposed Rule 6.5 [1-650] “Limited Legal Services Programs”

(Draft #5, 04/01/10)

Summary: Proposed Rule 6.5 is based upon recently approved rule 1-650, which in turn was based on Model Rule 6.5, and facilitates lawyer’s participation in limited legal services programs such as call-in hotlines. Most of the changes from rule 1-650 are non-substantive, and have been made to conform the language of the proposed Rule to that of the other proposed rules, e.g., changing “member” to “lawyer” and substituting proposed new rule numbers for existing rule numbers. See Introduction.

Comparison with ABA Counterpart

Rule	Comment
<input checked="" type="checkbox"/> ABA Model Rule substantially adopted	<input checked="" type="checkbox"/> ABA Model Rule substantially adopted
<input type="checkbox"/> ABA Model Rule substantially rejected	<input type="checkbox"/> ABA Model Rule substantially rejected
<input checked="" type="checkbox"/> Some material additions to ABA Model Rule	<input checked="" type="checkbox"/> Some material additions to ABA Model Rule
<input type="checkbox"/> Some material deletions from ABA Model Rule	<input type="checkbox"/> Some material deletions from ABA Model Rule
<input type="checkbox"/> No ABA Model Rule counterpart	<input type="checkbox"/> No ABA Model Rule counterpart

Primary Factors Considered

- Existing California Law

Rules

RPC 1-650

Statute

Case law

- State Rule(s) Variations (In addition, see provided excerpt of selected state variations.)

- Other Primary Factor(s)

Rule Revision Commission Action/Vote to Recommend Rule Adoption

(13 Members Total – votes recorded may be less than 13 due to member absences)

Approved on 10-day Ballot, Less than Six Members Opposing Adoption

Vote (see tally below)

Favor Rule as Recommended for Adoption 7

Opposed Rule as Recommended for Adoption 0

Abstain 0

Approved on Consent Calendar

Approved by Consensus

Commission Minority Position, Known Stakeholders and Level of Controversy

Minority Position Included. (See Introduction): Yes No

No Known Stakeholders

The Following Stakeholders Are Known:

California Commission on Access to Justice.

Very Controversial – Explanation:

Moderately Controversial – Explanation:

Not Controversial

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

Proposed Rule 6.5* Limited Legal Services Programs

April 2010

(Draft rule following consideration of public comment.)

INTRODUCTION:

Proposed Rule 6.5 is based upon recently approved rule 1-650, which in turn was based on Model Rule 6.5. Most of the changes from rule 1-650 are non-substantive, and have been made to conform the language of the proposed Rule to that of the other proposed rules, e.g., changing “member” to “lawyer” and substituting proposed new rule numbers for existing rule numbers. Most of the rest of the changes are for purposes of clarifying the language of the proposed Rule. In addition, the Commission recommends two other language changes intended to conform the Rule to well-settled California law and to provide guidance to lawyers on protecting confidential information they might have acquired under the auspices of a program governed under the Rule. See Explanation of Changes for paragraph (a) and Comment [4], respectively.

Variations in other jurisdictions. Nearly every jurisdiction has adopted some version of Model Rule 6.5, with little variation.

* Proposed Rule 6.5, Draft 5 (04/15/10).

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.5 Limited Legal Services Programs</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:</p>	<p>(a) A lawyer who, under the auspices of a program sponsored by a <u>court, government agency, bar association, law school, or</u> nonprofit organization or court, provides short-term limited legal services to a client without <u>reasonable</u> expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:</p>	<p>The title of the Rule has been shortened because, unlike the Model Rule, proposed Rule 6.5 is not limited to programs sponsored by courts and nonprofit organizations.</p> <p>The changes to paragraph (a) were first made in rule 1-650 to expand the list of organizations covered by the Rule.</p> <p>The word "reasonable" has been added as a modifier of "expectation" to comport with current California law on the formation of a lawyer-client relationship. See, e.g., <i>Zenith Insurance v. Cozen O'Connor</i> (2009)148 Cal. App.4th 998, 1010; Cal. State Bar Formal Ethics Opn. 2003-161.</p>
<p>(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</p>	<p>(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</p>	<p>Subparagraph (a)(1) is identical to Model Rule 6.5(a)(1).</p>
<p>(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.</p>	<p>(2) is subject to Rule 1.10<u>has an imputed conflict of interest</u> only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified <u>prohibited from representation</u> by Rule 1.7 or 1.9(a) with respect to the matter.</p>	<p>Subparagraph (a)(2) is based on Model Rule 6.5(a)(2). The phrase "has an imputed conflict of interest" has been substituted for a reference to Rule 1.10 as that rule is not recommended for adoption. The phrase "prohibited from representation" has been carried forward from current rule 1-650(A)(2); it is a more accurate statement than "disqualified" in the disciplinary rule context.</p>

* Proposed Rule 6.5, Draft 5 (04/01/10). Redline/strikeout showing changes to the ABA Model Rule.

<p align="center"><u>ABA Model Rule</u> Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 6.5 Limited Legal Services Programs</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.</p>	<p>(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule<u>conflict of interest that arises from a lawyer's participation in a program under paragraph (a) will not be imputed to the lawyer's law firm.</u></p>	<p>Paragraph (b) is based on Model Rule 6.5(b) but carries forward from current rule 1-650(B) the language originally adopted by the Board and approved by the Supreme Court.</p>
	<p>(c) <u>The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.</u></p>	<p>Paragraph (c) has no counterpart in Model Rule 6.5. The California Supreme Court added this paragraph to proposed rule 1-650, which the Board of Governors had adopted and sent to the Supreme Court. Paragraph (c), which is taken from the last sentence of Model Rule 6.5, cmt. [4], is identical to current rule 1-650(C).</p>

<p align="center"><u>ABA Model Rule</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[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.</p>	<p>[1] Legal services organizations<u>Courts, courts, government agencies, bar associations, law schools</u> 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<u>in addressing</u> 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, <u>whenever a client-lawyer-client</u> relationship is established, but there <u>usually</u> is no expectation that the lawyer's representation of the client will continue beyond the<u>that</u> limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen<u>check</u> for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10<u>1.9</u>.</p>	<p>Comment [1] is based on Model Rule 6.5, cmt. [1]. Changes were made in the first sentence to conform to the changes in paragraph (a). See Explanation of Changes for paragraph (a) and carry forward revisions made by the Supreme Court in approving rule 1-650.</p> <p>This is the language approved by the Supreme Court in rule 1-650. There was some controversy concerning the issue of the formation of an attorney client relationship when lawyers assist others who have legal problems; it appears that the Court inserted “whenever” to avoid specifying that such a relationship is always formed.</p> <p>The word “check” has been substituted for “screen” to avoid confusion that an ethical screen is required when a lawyer participates in a program governed by this Rule. The reference to Rule 1.10 has been deleted as that rule is not recommended for adoption.</p>

* Proposed Rule 4.1, Draft 1 (XX/XX/09). Redline/strikeout showing changes to the ABA Model Rule

<p align="center">ABA Model Rule</p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center">Commission's Proposed Rule*</p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center">Explanation of Changes to the ABA Model Rule</p>
<p>[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.</p>	<p>[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<u>these Rules of Professional Conduct and the State Bar Act, including Rules the lawyer's duty of confidentiality under Business and Professions Code section 6068(e)(1), Rule 1.6 and Rule 1.9(e),</u> are applicable to the limited representation.</p>	<p>Comment [2] is based on Model Rule 6.5, cmt. [2]. References have been added to the State Bar Act, which also regulates lawyer conduct in California, and Bus. & Prof. Code § 6068(e)(1), which in California also governs a lawyer's duty of confidentiality. Finally, because the duty of confidentiality is also relevant in proposed Rule 1.9(a) and (b), the limitation of Rule 1.9's applicability to 1.9(c) has been stricken.</p>
<p>[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.</p>	<p>[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. <u>Therefore, paragraph (a)(1) requires compliance with Rules 1.7 or and 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer. In addition, and with Rule 1.10 paragraph (a)(2) imputes conflicts of interest to the lawyer</u> only if the lawyer knows that another lawyer in the lawyer's <u>law firm is</u>would be disqualified by Rules 1.7 or 1.9(a) in the matter.</p>	<p>Comment [3] is based on Model Rule 6.5, cmt. [3]. Changes have been made to specifically clarify what is required by each subparagraph of paragraph (a) and to carry forward revisions the California Supreme Court made to rule 1-650.</p>

<p align="center">ABA Model Rule</p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center">Commission's Proposed Rule*</p> <p align="center">Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs</p> <p align="center">Comment</p>	<p align="center">Explanation of Changes to the ABA Model Rule</p>
<p>[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.</p>	<p>[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 <u>law</u> firm, paragraph (b) provides that Rule 1.10 is <u>imputed conflicts of interest are</u> 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 <u>any lawyer in the</u> lawyer's firm is disqualified <u>prohibited from representation</u> by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however <u>moreover</u>, a lawyer's participation in a short-term limited legal services program will not <u>be imputed to the lawyer's law firm or</u> preclude the lawyer's <u>law</u> 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. <u>However, once the conflict is identified, the member should be screened from the member's firm's representation of a client with interests adverse to a client that the member previously represented under the program's auspices.</u></p>	<p>Comment [4] is based on Model Rule 6.5, cmt. [4]. Changes to the Comment carry forward changes the Supreme Court approved in rule 1-650.</p> <p>The last sentence of Comment [4] has been added at the suggestion of COPRAC to clarify the actions a law firm should take once a conflict has been identified.</p>

<p align="center"><u>ABA Model Rule</u> Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs Comment</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 6.5 Nonprofit And Court-Annexed-Limited Legal Services Programs Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[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.</p>	<p>[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, <u>and</u> 1.9(a) and 1.10 become applicable.</p>	<p>Comment [5] is nearly identical to Model Rule 6.5, cmt. [5]. The reference to Rule 1.10 has been deleted as that rule is not recommended for adoption.</p>

Rule 6.5: Limited Legal Services Programs

(Comparison of the Current Proposed Rule to the initial Public Comment Draft)

- (a) A lawyer who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without reasonable 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~~has an imputed conflict of interest only if the lawyer knows that another lawyer associated with the lawyer in a law firm is prohibited from representation 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~~conflict of interest that arises from a lawyer's participation in a program under paragraph (a) will not be imputed to the lawyer's law firm.
- (c) The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.

COMMENT

- [1] Courts, government agencies, bar associations, law schools 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 in

addressing 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, whenever a lawyer-client relationship is established, there usually is no expectation that the lawyer's representation of the client will continue beyond that limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically check for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, ~~1.9~~ and ~~1.10~~1.9.

- [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, these Rules and the State Bar Act, including the lawyer's duty of confidentiality under Business and Professions Code section 6068(e)(1), Rule 1.6 and Rule 1.9, are applicable to the limited representation.

- [3] 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. Therefore, paragraph (a)(1) requires compliance with Rules 1.7 and 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer. In addition, paragraph (a)(2) ~~requires compliance with Rule 1.10~~imputes conflicts of interest to the lawyer only if the lawyer knows that another lawyer in the lawyer's law firm would be 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 law firm, paragraph (b) provides that ~~Rule 1.10 is~~ imputed conflicts of interest are 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 any lawyer in the lawyer's firm is prohibited from representation by Rules 1.7 or 1.9(a). By virtue of paragraph (b), moreover, a lawyer's participation in a short-term limited legal services program will not be imputed to the lawyer's law firm or preclude the lawyer's law 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. However, once the conflict is identified, the member should be screened from the member's firm's representation of a client with interests adverse to a client that the member previously represented under the program's auspices.
- [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; and 1.9(a) ~~and 1.10~~ become applicable.

Rule 1-6506.5: Limited Legal Services Programs

(Comparison of the Current Proposed Rule to Current California Rule)

~~(A)~~ (a) A memberlawyer who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without reasonable expectation by either the memberlawyer or the client that the memberlawyer will provide continuing representation in the matter:

- (1) is subject to ~~rule 3-310~~ Rules 1.7 and 1.9(a) only if the memberlawyer knows that the representation of the client involves a conflict of interest; and
- (2) has an imputed conflict of interest only if the memberlawyer knows that another lawyer associated with the memberlawyer in a law firm ~~would have~~ is prohibited from representation by Rule 1.7 or 1.9(a) ~~(a conflict of interest under rule 3-310)~~ with respect to the matter.

~~(B)~~ (b) Except as provided in paragraph (Aa)(2), a conflict of interest that arises from a member'slawyer's participation in a program under paragraph (Aa) will not be imputed to the member'slawyer's law firm.

~~(C)~~ (c) The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.

Discussion: COMMENT

[1] Courts, government agencies, bar associations, law schools 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 in addressing 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, whenever a lawyer-client relationship is established, there usually is no expectation that the lawyer's representation of the client will continue beyond that limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically ~~screen~~ check for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7 and 1.9.

[2] A memberlawyer who provides short-term limited legal services pursuant to ~~rule 1-650~~ 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 memberlawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. ~~See rule 3-110.~~ Except as provided in this ~~rule 1-650~~ Rule, ~~the~~ these ~~Rules of Professional Conduct~~ and the State Bar Act, including the member'slawyer's duty of confidentiality under Business and Professions Code ~~§section~~ 6068(e)(1), Rule 1.6 and Rule 1.9, are applicable to the limited representation.

[3] A memberlawyer who is representing a client in the circumstances addressed by ~~rule 1-650~~ this Rule ordinarily is not able to check systematically for conflicts of interest. Therefore, paragraph (Aa)(1) requires compliance with ~~rule 3-310~~ Rules 1.7 and 1.9(a) only if the memberlawyer knows that the representation presents a conflict of interest for the memberlawyer. In addition, paragraph (Aa)(2)

imputes conflicts of interest to the ~~member~~lawyer only if the ~~member~~lawyer knows that another lawyer in the ~~member's~~lawyer's law firm would be disqualified ~~under rule 3-310~~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 ~~member's~~lawyer's law firm, paragraph (~~B~~b) provides that imputed conflicts of interest are inapplicable to a representation governed by this ~~rule~~Rule except as provided by paragraph (~~A~~a)(2). Paragraph (~~A~~a)(2) ~~imputes conflicts of interest to~~requires the participating ~~member~~lawyer to comply with Rule 1.10 when the ~~member~~lawyer knows that any lawyer in the ~~member's~~lawyer's firm ~~would be disqualified under rule 3-310~~is prohibited from representation by Rules 1.7 or 1.9(a). By virtue of paragraph (~~B~~b), moreover, a ~~member's~~lawyer's participation in a short-term limited legal services program will not be imputed to the ~~member's~~lawyer's law firm or preclude the ~~member's~~lawyer's law 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. However, once the conflict is identified, the member should be screened from the member's firm's representation of a client with interests adverse to a client that the member previously represented under the program's auspices.

[5] If, after commencing a short-term limited representation in accordance with ~~rule 1-650~~this Rule, a ~~member~~lawyer undertakes to represent the client in the matter on an ongoing basis, ~~rule 3-310~~Rules 1.7 and ~~all other rules~~1.9(a) become applicable. (~~Added by order of the Supreme Court, operative August 28, 2009.~~)

Rule 6.5: Limited Legal Services Programs

(Commission's Proposed Rule – Clean Version)

- (a) A lawyer who, under the auspices of a program sponsored by a court, government agency, bar association, law school, or nonprofit organization, provides short-term limited legal services to a client without reasonable 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) has an imputed conflict of interest only if the lawyer knows that another lawyer associated with the lawyer in a law firm is prohibited from representation by Rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), a conflict of interest that arises from a lawyer's participation in a program under paragraph (a) will not be imputed to the lawyer's law firm.
- (c) The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.

COMMENT

- [1] Courts, government agencies, bar associations, law schools 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 in addressing 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, whenever a lawyer-client relationship is established, there usually is no expectation that the lawyer's representation of the client will continue beyond that limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically check for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7 and 1.9.

- [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, these Rules and the State Bar Act, including the lawyer's duty of confidentiality under Business and Professions Code section 6068(e)(1), Rule 1.6 and Rule 1.9, are applicable to the limited representation.

- [3] 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. Therefore, paragraph (a)(1) requires compliance with Rules 1.7 and 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer. In addition, paragraph (a)(2) imputes conflicts of interest to the lawyer only if the lawyer knows that another lawyer in the lawyer's law firm would be 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 law firm, paragraph (b) provides that imputed conflicts of interest are 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 any lawyer in the lawyer's firm is prohibited from representation by Rules 1.7 or 1.9(a). By virtue of paragraph (b), moreover, a lawyer's participation in a short-term limited legal services program will not be imputed to the lawyer's law firm or preclude the lawyer's law 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. However, once the conflict is identified, the member should be screened from the member's firm's representation of a client with interests adverse to a client that the member previously represented under the program's auspices.
- [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 and 1.9(a) become applicable.

**Rule 6.5 Limited Legal Services Programs
[Sorted by Commenter]**

**TOTAL = 6 Agree = 6
Disagree = 0
Modify = 0
NI = 0**

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	Anonymous	A			Although commenter did not specifically reference this rule, she expressed her support for all the rules contained in Batch 6.	No response needed.
2	COPRAC	A			We support adoption of the proposed rule and are pleased that the last sentence of Comment 4 has been added in accordance with our suggestion.	No response needed.
3	McIntyre, Sandra K.	A			Agrees, with no comment.	No response needed.
4	Orange County Bar Association	A			We support the adoption of proposed Rule 6.5 and agree with the recommendations of the Commission.	No response needed.
5	San Diego County Bar Association Legal Ethics Committee	A			We approve the rule in its entirety.	No response needed.
6	Santa Clara County Bar Association	A			Agrees, with no comment.	No response needed.

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

Rule 6.5: Nonprofit and Court-Annexed Limited Legal Services Program

STATE VARIATIONS

(The following is an excerpt from Regulation of Lawyers: Statutes and Standards (2010 Ed.) by Steven Gillers, Roy D. Simon and Andrew M. Perlman.)

Alabama: Rule 6.5 is based on Model Rule 6.5, but in the rules effective December 10, 2008, Alabama adopted a Rule 6.6, which has no Model Rule equivalent. Rule 6.6 states that any inactive member of the Alabama State Bar may render pro bono services by paying special membership dues and becoming a special member of the Alabama State Bar for the year in which the pro bono services are rendered.

California Effective August 28, 2009, California has adopted a new Rule 1-650 that is substantially similar to Model Rule 6.5, but Rule 1-650(A) also refers to programs sponsored by a “government agency, bar association, [or] law school,” and California adds a new Rule 1-650(C) that states as follows: “The personal disqualification of a lawyer participating in the program will not be imputed to other lawyers participating in the program.”

Connecticut adds the following paragraph that is identical to Comment 2 to ABA Rule 6.5:

(b) 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.

New Hampshire: Rule 6.5(a) applies only to a “one time consultation with a client” instead of the ABA’s version “short-term limited legal services to a client.” Also, echoing ABA Comment 2 to Rule 6.5, New Hampshire’s Rule 6.5(c) provides that “Rules 1.6 and 1.9(c) are applicable to a representation governed by this Rule.” Finally, a special New Hampshire Comment states as follows:

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].

New York: In the rules effective April 1, 2009, Rule 6.5(a) covers programs sponsored by government agencies and bar associations. The Rule also specifies that a conflict arises only if a lawyer “has actual knowledge [of the conflict] at the time of commencement of representation.” New York also adds Rule 6.5(c) -(e), which provides as follows:

(c) Short-term limited legal services are services providing legal advice or representation free of charge as part of a program described in paragraph (a) with no expectation that the assistance will continue beyond what is necessary to complete an initial consultation, representation or court appearance.

(d) The lawyer providing short-term limited legal services must secure the client’s informed consent to the limited scope of the representation, and such representation shall be subject to the provisions of Rule 1.6.

(e) This Rule shall not apply where the court before which the matter is pending determines that a conflict of interest exists or, if during the course of the representation, the lawyer providing the services becomes aware of the existence of a conflict of interest precluding continued representation.

Wisconsin: Rule 6.5(a) also applies to a program sponsored by “a bar association” or “an accredited law school.”