Summary of Ballot Item D

Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services

Short Summary:

In order to facilitate the provision of pro bono legal services, Proposed Rule 6.05 of the Texas Disciplinary Rules of Professional Conduct creates narrow exceptions to certain conflict of interest rules when a lawyer provides limited advice and brief assistance on a pro bono basis. For purposes of Proposed Rule 6.05, “limited pro bono legal services’ means legal services that are: (1) provided through a pro bono or assisted pro se program sponsored by a court, bar association, accredited law school, or nonprofit legal services program; (2) short-term services such as legal advice or other brief assistance with pro se documents or transactions, provided either in person or by phone, hotline, internet, or video conferencing; and (3) provided without any expectation of extended representation of the limited assistance client or of receiving any legal fees in that matter.” This provision, in various forms, has previously been adopted by 48 other states and the District of Columbia.

Detailed Summary:

In order to facilitate the provision of free legal services to those in need, Proposed Rule 6.05 of the Texas Disciplinary Rules of Professional Conduct creates narrow exceptions to certain conflict of interest rules when a lawyer provides limited advice and brief assistance on a pro bono basis. The limited pro bono legal services programs described by Proposed Rule 6.05 are often operated under circumstances where a lawyer is unable to complete a full conflict check, such as at a disaster relief site, a courthouse help desk, or a weekend rural legal clinic. As noted in paragraph two of the Proposed Comment to Rule 6.05, “[t]he limited and short-term nature of the legal services rendered in such programs reduces the risk that conflicts of interest will arise between clients represented through the program and other clients of the lawyer or the lawyer’s firm. Other than the limited exceptions set forth in this Rule, a lawyer remains subject to all applicable conflict of interest rules.”

While there is some variation, Proposed Rule 6.05 is generally based on Rule 6.5 of the American Bar Association (ABA) Model Rules of Professional Conduct, which was adopted in 2002 in response to concerns that strict application of conflict of interest rules may deter lawyers from providing certain short-term pro bono legal services. With the exception of Texas and Kansas, every other state, as well as the District of Columbia, has either adopted Model Rule 6.5 or a variation of Model Rule 6.5.

The conflict of interest limitations in current Texas Rules 1.06, 1.07, and 1.09 are broad and are generally imputed to all other lawyers in a firm. Paragraph (a) of Proposed Rule 6.05 provides that the conflict of interest limitations in Rules 1.06, 1.07, and 1.09 do not prohibit a lawyer from providing limited pro bono legal services unless the lawyer actually “knows, at the time the services are provided, that the lawyer would be prohibited by those limitations from

Paragraph (b) of Proposed Rule 6.05 addresses the imputation of conflicts through a lawyer providing limited pro bono legal services. It provides that certain conflicts will not be imputed to other lawyers in a firm with the volunteer lawyer so long as the volunteer lawyer takes proper steps to protect the confidential information from access by the other lawyers in the firm. The volunteer lawyer, however, remains subject to those conflict rules as to the representation of other clients.

Subparagraph (c) of Proposed Rule 6.05 provides that “[t]he eligibility information that an applicant is required to provide when applying for free legal services or limited pro bono legal services from a program described in subparagraph (d)(1) by itself will not create a conflict of interest if: (1) the eligibility information is not material to the legal matter; or (2) the applicant’s provision of the eligibility information was conditioned on the applicant’s informed consent that providing this information would not by itself prohibit a representation of another client adverse to the applicant.” The exception is designed to avoid the mere possession of eligibility information by the legal services organization from being used to disqualify legal services staff and pro bono lawyers from representing other clients. Unlike other lawyer-client relationships, a person seeking free legal services or limited pro bono legal services from one of these programs must disclose confidential financial information as part of the application process and before ever seeing a lawyer even though that information may have no relevance to the representation.

Subparagraph (d) provides that, for purposes of Proposed Rule 6.05, “‘limited pro bono legal services’ means legal services that are: (1) provided through a pro bono or assisted pro se program sponsored by a court, bar association, accredited law school, or nonprofit legal services program; (2) short-term services such as legal advice or other brief assistance with pro se documents or transactions, provided either in person or by phone, hotline, internet, or video conferencing; and (3) provided without any expectation of extended representation of the limited assistance client or of receiving any legal fees in that matter.” As noted in paragraph 12 of the Proposed Comment to Rule 6.05, the definition “is designed to ensure that the services offered are so limited in time and scope that there is little risk that conflicts will arise between clients represented through the program and other clients of the lawyer or the lawyer’s firm.”

Paragraph (e) of Proposed Rule 6.05 is intended to clarify that lawyers are not deemed to be part of the same firm simply because they volunteer through the same limited pro bono legal services program.

*Note: The State Bar of Texas staff has provided this document as a general summary of the rule proposal. It may not address every aspect of the proposal, and reasonable minds may differ on the characterizations of the proposal. Voters are strongly encouraged to directly review the Proposed Amendments to the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure, which are available at texasbar.com/rulesvote.*